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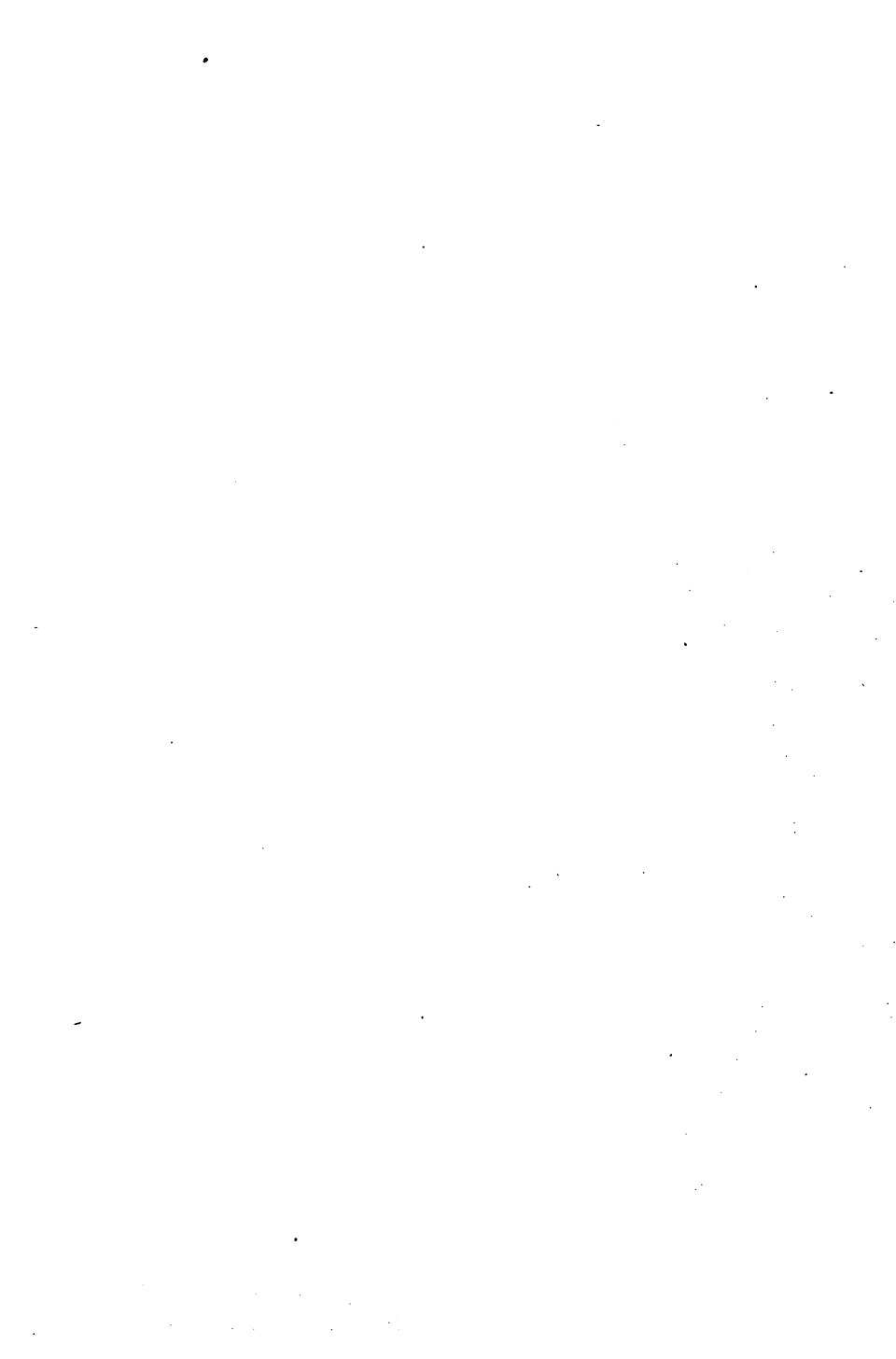
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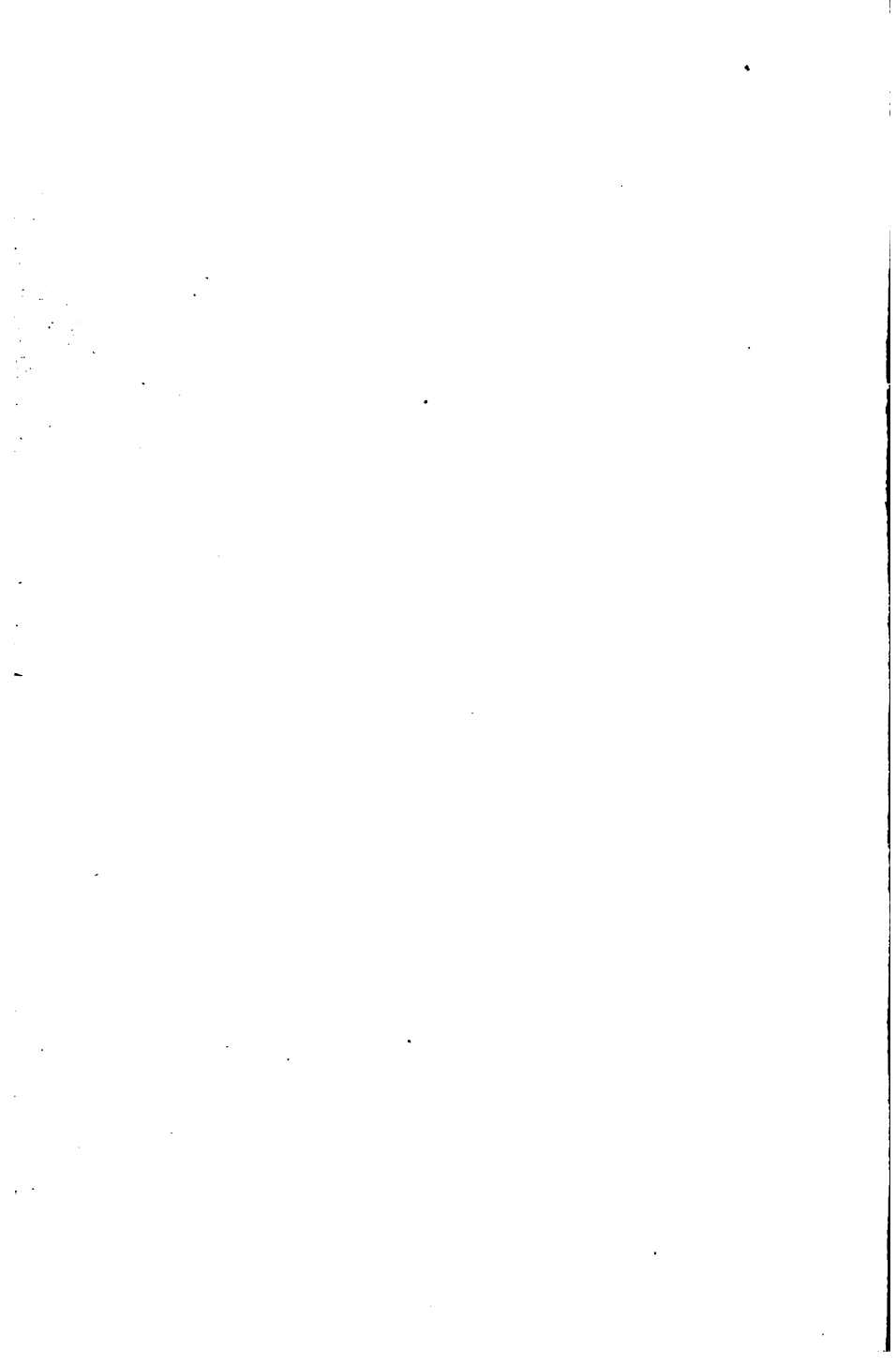
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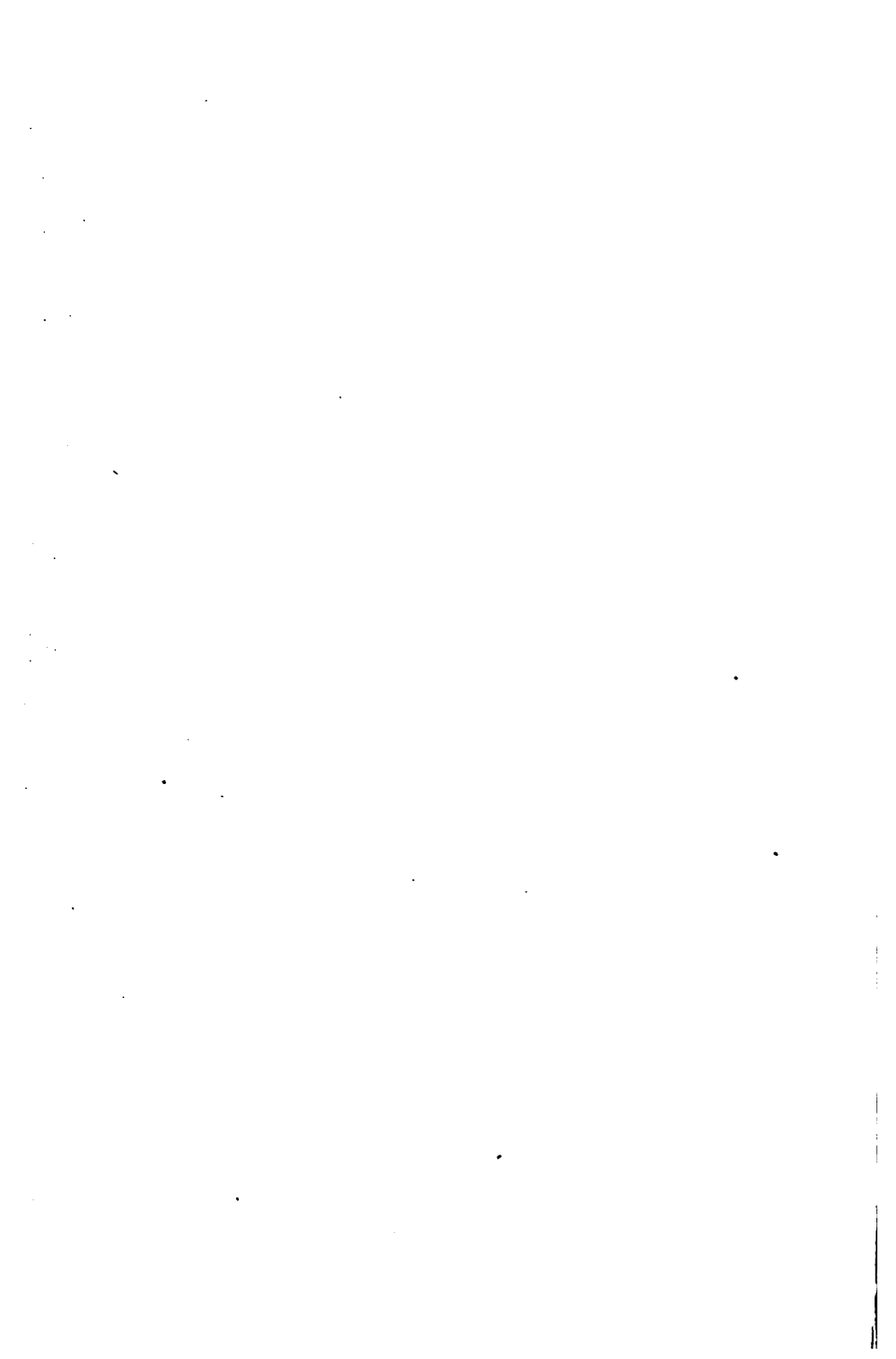
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AMERICAN GOVERNMENT AND MAJORITY RULE

**A STUDY IN AMERICAN POLITICAL
DEVELOPMENT**

By

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TO VIKU
ALBONIAO



PREFACE

The purpose of this volume is to point out the fact that the people of the United States have been hindered in the attainment of democracy, or the rule of the majority, by the form of government through which they have been compelled to act. The framers of the Constitution of the United States and of the states sought to prevent the immediate and direct rule of the numerical majority upon the theory that all government was by nature evil and that the people might become as tyrannical as any king.

To preserve liberty and protect the individual it was thought necessary both to limit the sphere of governmental action and to prevent hasty action under the influence of passion; accordingly the theory of the separation of the powers of government and the system of checks and balances were elaborated in close connection with the theory of strictly limited and delegated powers.

The popularity of a republican form of government long blinded us to a realization of the true condition and in the meanwhile many attempts

were made to restore the government to the people on the assumption that somehow or other forces hostile to popular control had obtained possession of the government; these reforms have not accomplished the desired end; the people do not govern.

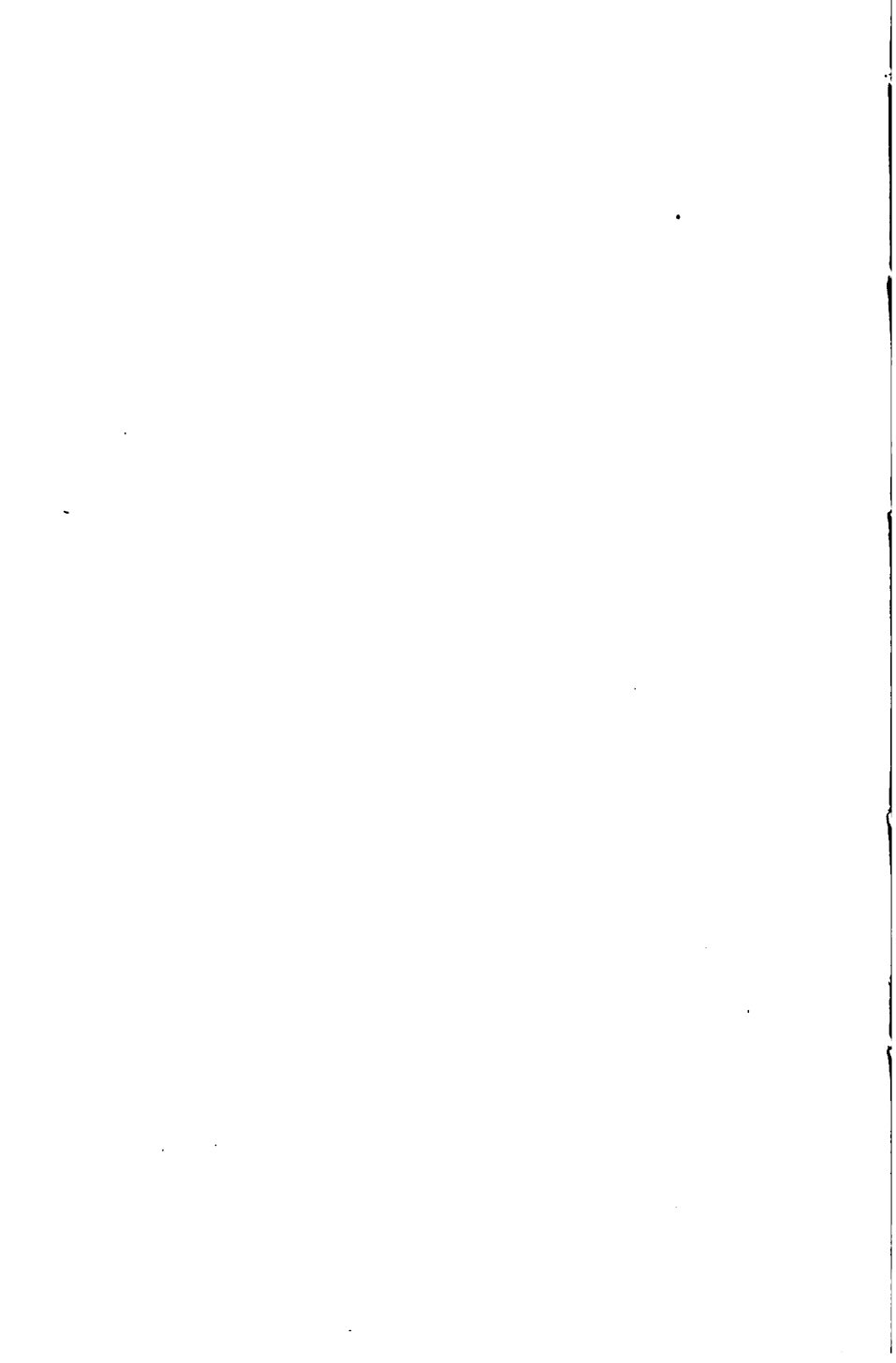
Moreover we have ceased to fear the action of government as dangerous to liberty and are eager to have it undertake a wide field of activity in behalf of the social well being; we find, however, that government is neither equipped with the necessary authority nor fashioned for efficiency in performing these new tasks. The suggestion is here made that the modification of our government must be in the direction of greater simplicity if we would secure efficiency and responsibility to the will of the people.

I wish to express my appreciation of the kindness of my colleague Dean David P. Barrows of the University of California and of Professor Edgar Dawson of Hunter College, New York City, who have read the manuscript in whole or in part.

EDWARD ELLIOTT.

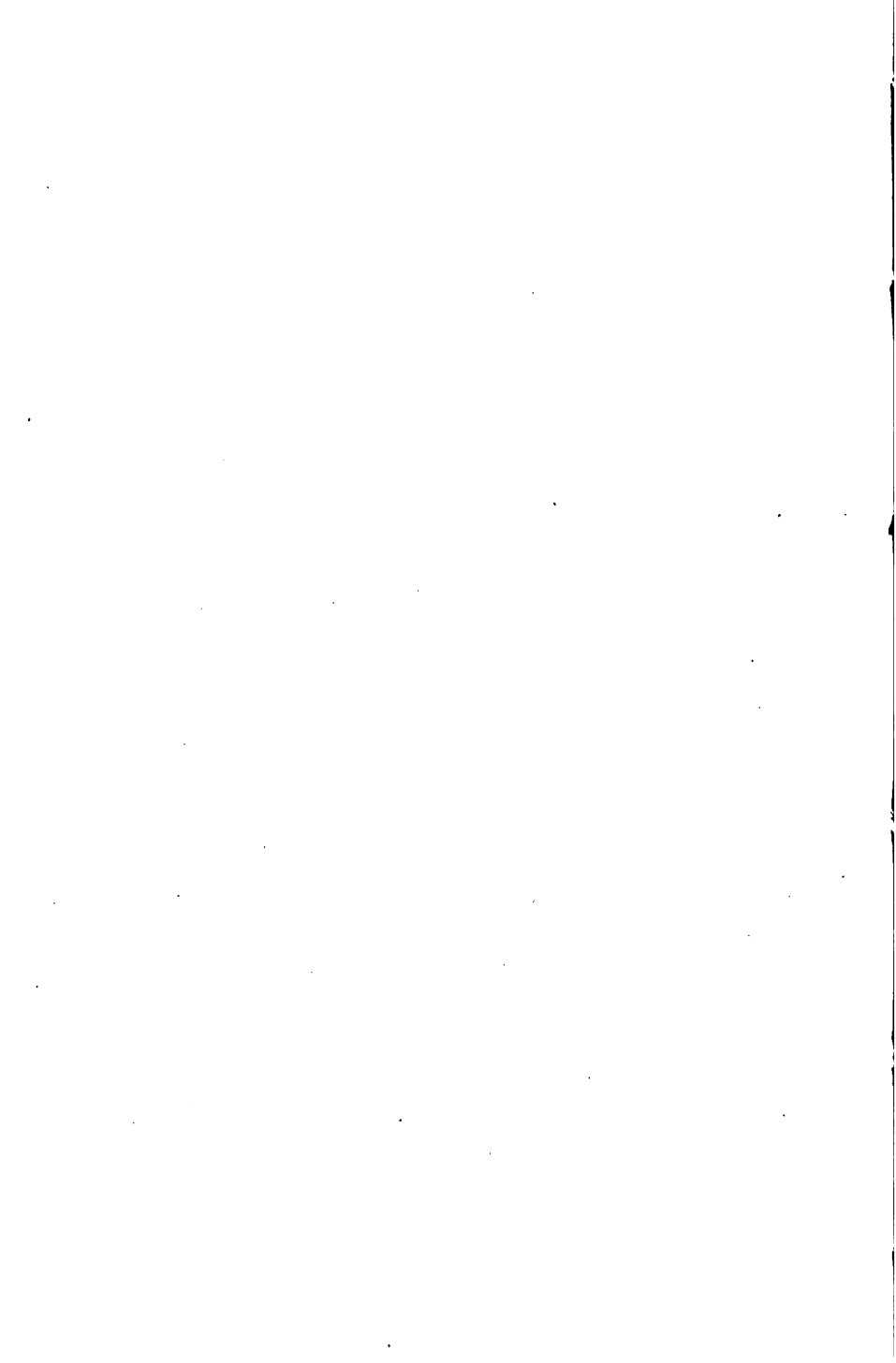
Berkeley, California
October 1915

**TO MY WIFE
IN AFFECTIONATE ACKNOWLEDGMENT
OF HER STEADFAST INTEREST
AND CONSTANT ASSISTANCE**



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CHAPTER I

COLONIAL CONDITIONS AND THE FRAMING OF THE CONSTITUTION

The roots of American democracy run back as far in history as do those of American government. In both instances colonial conditions and institutions are midway points, from which one looks back to the mother country and forward to the twentieth century. To know and understand the problems of government which confront our democracy today, we must look to the steps by which the present relation of governmental institutions to democratic desires has been attained.

The seventeenth century was the century of revolution in English history. In America it was the century of colonial settlement and the home conditions and differences found reflection to some extent in the settlements made in America. But despite the differences in religious beliefs and in the relative importance in the scheme of government to be attributed to King and Par-

liament, there was unanimity, both in England and in the colonies, regarding the general framework and structure of government. The struggle for English liberty did not concern itself with the form of government but with the relative power in government to be enjoyed by King and Parliament. The period of the Commonwealth was anomolous and was not the result of a revolutionary movement to do away with the monarchy. Even under the Commonwealth the old form was retained but with a new name.

~~The essential elements of the framework of~~ English government were a single executive, the king, and a dual legislative body, the Parliament, composed of the hereditary Lords and the elected Commons. It was this form of government which was set up in the colonies, modified to suit the new conditions. The governor, the council and the general court or burgesses repeated the general features of English government, but the conditions and circumstances of their settlements produced important modifications.


The colonial settlements in Virginia, which may be regarded as typical in large measure of the other Southern colonies, were made by men principally interested in a commercial venture.

They were in sympathy politically with the crown and religiously with the Church of England and yet they soon found themselves in opposition to royal policies and nowhere in the colonies was the opposition to royal governors more bitter than in Virginia, nor were the rights of the colonists to self-government anywhere more vigorously maintained.

The physical conditions of life of the early settlers were everywhere conducive to the development of a democratic spirit, but it differed very much in the different parts of the country. In Virginia, the settlers found a pleasant and fertile land, watered by great rivers which served as highways of communication and transportation. One by one large tracts along the rivers were taken up and each plantation became the center of a community life of its own. Settlement advanced up the rivers, plantation after plantation, each with its own wharf whence it shipped tobacco in vessels which bore it direct to England, bringing back in exchange everything of which the plantation might be in need. The towns were few and sparsely populated and the business life of the colony was carried on chiefly directly between the plantations and the mother-country.

This method of settlement was favored by the natural conditions of a rich soil and a mild climate, by the geographical features of the country and by the absence, for the most part, of hostile Indians, which permitted of scattered settlements. The agricultural community which was developed under these conditions modelled itself upon rural England. The county was the important unit of government and the economic conditions tended to produce a limited number of leading families, corresponding to the county families in England. They were the gentry, a sort of landed aristocracy, to which the institution of slavery furnished an additional economic and social foundation.

A representative assembly was early developed in the colony and proved a constant foe to royal privilege. The House of Burgesses became the bulwark of popular liberty and through it the people demanded and secured a large share in the government of the colony. Self-government and a right to approve of all taxes levied were subjects of frequent contests with royal governors in the light of which we forget the pseudo-aristocracy of first families and remember only the struggle for local self-government—rightly re-



garded as one of the most important elements of American democracy.

In New England there were different motives lying back of the settlements and different conditions surrounding them and moulding their institutions, yet here too a great love of liberty as identified with self-government grew up. The religious motive was primarily responsible for the migration to the New World of the Puritan colonists of New England. They sought a place in which they might observe their own forms and maintain their own doctrines and yet remain Englishmen. These Puritans, who very soon became Congregationalists, had a system of church government which contained the seeds of democracy; every church was separate and distinct from every other and was composed of members, each of whom had an equal voice with every other in all matters concerning church government; every church was governed solely by its own members and without connection with, much less without subordination to, any outside body.

Here then were local self-government and equality in each church and it was not long ~~till~~ before these principles of ecclesiastical organization were transferred to the field of politics, and local self-

A rather trifling comment!
'Tis not Aw. you & me

X government by equals became an accepted axiom of the political arrangements.

The form of government in which these ideas found realization was that of the "town," and the town-meeting has become the classic example of pure or direct democracy in America. In it all the freemen of the "town" or district might gather and in it the laws were passed, taxes levied and the selectmen chosen to execute the laws; to it also they made their reports and by it they were held to account.

The conditions of life surrounding the New England colonists were favorable to the development of the town system, with its democratic features, and unfavorable to the development of social distinctions and classes. The country was ill-adapted to agriculture by reason of a poor and rocky soil and the severity of the winters. As a natural result the settlers soon turned to trade and commerce and were thus drawn together into compact settlements. The influence of the church organization was a strong factor in the development of the town system inasmuch as every church was an ecclesiastical unit as every town was a political unit, and in the first years of settlement only the church members were citizens

of the town with a voice in the town meeting. Finally the warlike and hostile Indians were long a terror to the New England settlers and the need for protection forced the colonists to hold together.

The county never played a conspicuous part in the governmental arrangements of New England, serving chiefly as a judicial district. The elective General Court was always active in upholding the rights of the colonists to local self-government; in the charter colonies, where the governors were chosen by the people, the principle of self-government was carried out in the largest measure. The struggles of the people against the crown were as violent and as dramatic as in any part of the country.

The conditions of life in New England more than elsewhere in the American colonies were unfavorable to the development of an aristocratic spirit; there were no great landed proprietors nor was slavery ever very prevalent, and the life in the towns was close and intimate, but above all the ease with which a man could become independent and the necessity under which all were of working, made the maintenance of social classes an impossibility. There was little or no attempt

to do so and both the social and political arrangements were developed along democratic lines.

What took place in New England and in the South, took place in a modified form in the middle colonies. As they were the middle colonies geographically, so they were in their life and their government. The soil and climate were not unfriendly to agriculture, yet the splendid rivers and harbors were productive of commerce; neither the town nor the county system of local self-government predominated nor in colonial government was there the same bitter contest between the crown and the representatives of the people. The type of governmental form and of democratic feeling was less pronounced than in the other sections, yet here, too, the fundamental conditions of life and of governmental form were essentially democratic.

In all the colonies there were certain general features to be found, which were due partly to their common origin, and partly to the fact of the settlement of a new country; there was a common language and a common law and despite the differences in local and colonial governments, there were many likenesses in governmental structure; everywhere there was a large measure of self-

government and an equally large measure of love of liberty; everywhere the conditions of life had tended to produce social equality. Upon the foundation of their common elements, a union of the colonies for the defense of their liberty was possible and a common declaration of their political principles became the first step toward a national life and a national democracy.

The Declaration of Independence sought to justify the Revolution by a system of political philosophy which was thoroughly English in its origin. At the close of the revolutionary movements of the seventeenth century in England there came the "Great and Glorious Revolution" of 1688 in which the power of the people as represented in Parliament finally achieved recognition and the kings of England were thenceforth kings by the grace of the people and not by the grace of God.

In the midst of the Civil Wars the royalist, Thomas Hobbes, had sought to establish the power of the king by a theory of society and of government which placed absolute and unlimited power in the hands of the sovereign, whom Hobbes was prone to identify with the absolute monarch. According to his view men originally

lived in a state of nature in which every man had a right to everything and in which might made right. This state of nature was a state of war of all against all and in it "the life of man was nasty, solitary, poor, brutish and short."

In order to escape from the ills of the state of nature and under the guidance of a law of nature which bade men seek peace, every man entered into a contract with every other man by which each surrendered to the sovereign, in so far as every one else did the same thing, his right to govern himself. The sovereign, who himself did not enter into the contract, thus became possessed of supreme and unlimited power over all the individuals in society; by the contract, they had made his will their will and consequently rebellion was a logical absurdity. Moreover to rebel and to overthrow government, the sovereign power, was to break the social compact and to remit men again to a state of universal war.

The conception of absolute power in the monarchy was definitely defeated in England in the Revolution of 1688 and John Locke sought to give to the success of the popular movement, as Hobbes had given to the royalists, a theoretical

and philosophical foundation. The elevation of William and Mary to the throne was regarded as the triumph of liberty and this liberty Locke sought to justify through the nature of society and government and ultimately through the nature of man himself. His starting point is the fact that man is not responsible for his own existence, and has not complete power over his own life since he has no right to take his life, which came from God; therefore he cannot give to another complete power over his life, since he cannot give more than he himself possesses.

The state of nature which preceded society Locke thought was a state of peace and not a state of war and by the social contract men sought only to avoid the inconveniences arising in the state of nature; these were due to the fact that every man was judge in his own case and society was established in order that there might be a common judge and a known law to live by. Governments were set up for the protection of life, liberty and estate, and whenever they failed to accomplish the purpose for which they were established, they might be changed by the people; government was agent, not master, and the overthrow of government did not destroy society.

The right of revolution was a logical deduction from his theory of the purpose of government and it rested in the people from whose consent in the social contract governments derive their powers.

Locke was seeking to justify the Revolution of 1688, by which a limited royal authority had been constituted, through a theory of government which made all political authority limited by the very nature of its objects, and at the same time he found a protection for the liberty of the individual against all government in the moral nature of man. Born free, it was not within the power of men to give to anyone despotic power over them; absolute political power was impossible.

In this fashion Locke sought to establish the theoretical basis for human liberty, and the Whig party in England during almost a century of supremacy proclaimed its adherence to these principles; their application resulted in a supremacy of Parliament over the King and of the House of Commons over the Lords.

The Whigs and the theories of Locke fell on evil days when George III came to the throne; he established a practical control over Parlia-

ment and came nearer realizing the Stuart idea of absolute royal power than any king since Charles I. It was against this royal power grown to such dangerous proportions that the Declaration of Independence was largely directed, and the theories of Locke formed the foundation upon which the colonists grounded their claims. To the theory of Locke that government is limited by its purposes and that when it fails to fulfill these purposes it may be overthrown, there was added the conception of the inherent and inalienable rights of man. The idea that all men were endowed by their Creator with certain rights, among which were the rights to life, liberty and the pursuit of happiness, had been developed in the colonies and first of all in Rhode Island when Roger Williams proclaimed religious liberty as belonging to men simply because they were men.

The political philosophy of the Declaration of Independence was firmly rooted in individual liberty and the end sought by it was some barrier to the action of government which could protect the liberty of the individual; the theory that it was the inevitable tendency of all governments to become oppressive and tyrannical found gen-

eral acceptance; government was regarded as the natural foe of liberty and therefore some check upon its action was needed. Locke went back to man in a state of nature and the colonists to the nature of man, while the Declaration of Independence proclaimed rights both by the law of nature and by the nature of man.

The Declaration of Independence was the embodiment of the political philosophy as well as of the causes of the Revolution, or rather let us say that the events which led to the Declaration were violations of a theory of government and a statement of this theory was an essential part of the justification of the step that was being taken. The principles then proclaimed have been the great democratic platform for succeeding generations and the history of our political struggles may be interpreted as a succession of more or less successful efforts on the part of the people to secure in practice the application of these theories. It is true that the belief in a doctrine of natural rights has almost disappeared and that no longer do we seek an impassable barrier to limit the action of government, but the attempt to establish the equality of all men and to make government derive its just powers from the con-

sent of the governed has gone steadily forward. The Declaration has been the platform of American democracy and the realization of its planks has been sought through governmental arrangements. ✓

The only bond of union among the colonies during the earlier years of the Revolution was the Declaration of Independence; a plan of government to unite the colonies was proposed to the Continental Congress very soon after the adoption of the Declaration, and though this plan was accepted by the Congress in the following year and submitted to the states for their approval, it was not until 1781 that it was accepted by them all. This plan of union, called the Articles of Confederation, held the colonies together in a loose union until the adoption of the present Constitution in the year 1789.

The Articles of Confederation were based upon the theory of the equality of the states; in the single governmental agency, the Congress, each state had an equal voice; size and population were not accorded consideration and Rhode Island or Delaware was as strong as Massachusetts or Virginia. The Congress resembled a body of diplomats more nearly than anything ✓

5

else and combined in itself all the functions of government.

Even before the Declaration of Independence, the royal governors had been driven out and a temporary authority set up; in some of the colonies, constitutions had been adopted, setting up a framework of government identical with the colonial forms except that popular sovereignty replaced that of the king and an elected governor and legislative bodies, the governor and council appointed by the crown. Immediately after the Declaration and upon the advice of the Congress, all the states did likewise. The general model was Parliament and the features of a single executive and a dual legislative body were generally present in the new state governments.

† The interesting and novel feature about these new written constitutions was the fact that they rested upon the theory of popular sovereignty; the will of the people was the supreme and ultimate source of all power; from them all governments derived their powers, thus putting into immediate practical operation one plank from the platform in the Declaration of Independence. Moreover these constitutions, resting upon the will of the people, were regarded as limitations

upon the powers of the people; they were the self-imposed limits upon the powers of government. Other evidence of this attitude toward government is seen in the Bills of Rights, prefixed to most of these new state constitutions; they were an expression in concrete form of the inherent and inalienable rights of man which not even a popular government could violate.

In the period of agitation which preceded the outbreak of the Revolution, the colonists had discussed the principles of government in many well argued pamphlets and had arrived at a pretty clear view of the theory of government—a view which found expression in the Declaration of Independence. After the war began, political discussion was no longer of practical consequence and soon ceased altogether; it did not begin again until the failure of the Union under the Articles of Confederation brought a realization of the need for some other and better form of Union if the fruits of victory were to be attained in the fullest measure.

The weakness of the Union under the Articles of Confederation lay in the fact that the Congress had no power to put its determinations into effect but was compelled to depend upon the

individual states to carry them out within their own borders. This weakness was best illustrated in the field of finance. The Articles of Confederation conferred upon the Congress the right to levy requisitions upon the states and in putting this right into operation, the Congress apportioned to each state the amount of its contribution to the general fund. But Congress had no way of compelling a state to comply with the requisition; it itself could not levy a tax upon the individuals and it could not force a state to do so; it could only request a state to pay and then leave it wholly at the pleasure of the state to comply or not. Voluntary contributions for political purposes are not likely to continue unless the contributor feels some immediate gain therefrom, and in the case of the states, jealousies and local pride were placed in the scale against the support of the government of the Confederation.

Following hard upon the conclusion of peace with Great Britain, a period of "hard times" began; business of every sort had been badly deranged and in many cases destroyed by the war; the financial situation was bad but more from the lack of a good financial program and a government adequate to carry it out than from the

actual condition of the country; an inflation of the currency though unsupported issues of paper money had brought the quick retribution of the destruction of credit; the soldiers constituted a numerous and often dissatisfied element in the community; the war had broken down many social lines and had put the communities in a state of social fluidity with an accompanying social unrest. Economic depression and social unrest combined produced disorders which government found it very difficult to suppress. X

In the midst of such conditions, the inadequacy and inefficiency of the central government were apparent; the only hope of order lay in the state governments which were strengthened in the popular mind in proportion as the central government X proved inadequate; yet it was evident that some union of the states was necessary, both as a protection against foreign powers and as a means of maintaining peace and prosperity at home.

It is familiar history how the states began to discriminate against each other in their commercial regulations and how out of these came the Annapolis Convention to consider the commercial interests of the states bordering upon the Potomac and the Delaware, and how the Annapolis

Convention, convinced that only a national commercial system could settle the questions involved, issued a call for a general convention of delegates from all the states to meet in Philadelphia in the year 1787.

The Congress had degenerated both in numbers and in quality till it commanded little respect; seeing the handwriting on the wall, it heeded the signs of the times and issued a call for a constitutional convention to meet at the same time and place as indicated by the Annapolis convention. The two were thus coalesced and resulted in the Constitutional Convention of 1787, called in the words of the resolution of the Congress, "for the sole and express purpose of revising the Articles of Confederation."

So much of the history of the calling of this Convention has been thought necessary to show how fully the "Fathers" believed in the political philosophy which placed all political authority in the people and which proclaimed that all just governments derived their powers from the consent of the governed.

Upon assembling in Philadelphia, the delegates to the Convention were impressed with the impossibility of amending successfully the Arti-

cles of Confederation. One of their first acts, therefore, was to abandon the instructions under which the Convention had been called and to determine to elaborate a new form of government for the Union. Such an act was revolutionary and accordingly the Convention determined to submit the result of its labors to the people for their approval or rejection, and not to the legislatures of the state. If the people, the source of political power, approved of their work and adopted the constitution, all irregularities of procedure, all revolutionary acts of the Convention, would be wiped out. This step by the Convention resulted in the reference of the proposed constitution to conventions in the several states and set a precedent which became well nigh universal in our constitutional practice. Generally speaking our constitutions and their amendments have differed from ordinary law in being accepted by the people, either through conventions or through popular vote, instead of through legislatures. More recently this distinction has been minimized, if not obliterated in certain of the states, through the adoption of the initiative and the referendum for the passage of ordinary laws.

The new form of government which the Con-

vention devised for the Union differed from the old form under the Articles of Confederation in many essential particulars. In the first place it was a Federal Union instead of a Confederation; it was itself a state composed of states and not a mere league or alliance of states. The equality of the states which was fundamental under the Articles, was abandoned under the new plan except for the equal representation of the states in the Senate. This is not the place for a presentation of the struggles and compromises of the Convention; it is enough for our purposes to observe the results as seen in the structure of the government and the spirit which underlay that structure.

* The outline of our system of government is quickly stated. The people are regarded as the possessors of all political power; a portion of their power they have delegated to the central government, a portion to the state governments, and a portion they have retained. The principle which underlay the division of powers between the state governments and the Federal government was to retain for the former those subjects of action which were local and particular and to confer upon the latter the power to deal with those matters which were common to all the states.*

So it was that foreign affairs, the army and navy, the financial system, the coinage, the postal service, and interstate and foreign commerce were delegated to the central government while rights of property and of contract and family relations were left to the states.

All governmental authority was distributed among the three branches or departments, the executive, the legislative and the judicial. The chief executive was a single individual, the President in the Federal government and the governors in the states; the legislative power was everywhere lodged in two houses, an upper and a lower, and the judicial in a hierarchy of courts culminating in the Supreme Court of the United States and similar courts in each state. The models for this structure of government were the colonial institutions and the British government.

The spirit which underlay this framework and system of governments is not so readily and easily stated. There was a very general acceptance of the principle of popular sovereignty but combined with this acceptance went a fear of government which resulted in a fundamental contradiction between theory and practice. Though the power of the people was recognized, it was everywhere

subjected to limitations the purpose of which was to prevent government from becoming an instrument of oppression.

The conception of modern democracy is based upon equality and majority rule, but no such ideas were in the minds of the framers of the constitutions, either those of the states or that of the nation. The principle of equality and the rule of the majority were theoretically accepted but in practice the suffrage was restricted to the propertied classes and the rule of the majority within these classes was very tightly hemmed in by provisions for the protection of the minority.

There were at least three factors which are worthy of consideration in an analysis of this spirit which underlay the inception of our governments. In the first place the impression of George III as a "royal brute" and a tyrant, seeking to crush liberty in America, had sunk deep into the minds of the men of the Revolution, who were likewise the makers of the constitutions. Royal governors in the American colonies were the local examples of that tyranny which had become associated in history with royal power and royal power was synonymous with the power of government. The absolute monarchy was the

all but universal type of government in the seventeenth and eighteenth centuries. For this reason, if for no other, governments and rulers were objects of suspicion to the people, and this attitude was present even toward governments set up upon the revolutionary basis of popular sovereignty. But a second reason for the attitude of distrust of government is to be found in a theory which goes back to the Church Fathers, They regarded the institution of government as due to the fall of man in Adam and as a punishment for this original sin. Government, then, was by its nature evil and one phase of this evil was that of government as the oppressor of mankind. This view was a natural accompaniment of the age of absolute monarchs.

Finally the fear of government took on another aspect. The rulers had been the source of the taxing power by which the individual was compelled to part with his property at the whim of the monarch, and too often he saw that the only use to which his property thus taken was put, was to minister to the vicious pleasures of the ruler. In England in the seventeenth century, Locke, in seeking to protect the individual in the enjoyment of his property, developed the theory

that one of the purposes of government was the protection of property and that when government failed in its purpose or violated this purpose, it could and should be overthrown. The protection of property came to be regarded as almost the chief function of government, and the makers of our constitutions were principally men of property who held this conception of government. It was natural, therefore, that they should fear lest government should fall under the control of the people without property who might use it to injure and not to protect property.

The combination of these three factors led to the many complicated checks and balances to be found in the system—each of which is fundamentally a limitation upon the immediate and direct supremacy of the popular will. It was regarded as most unsafe to permit the will of the people, upon which the whole structure rested, to find a ready means of expression for it was very generally believed that tyranny was as easily developed under popular government as under monarchical. Government was looked at askance because it had always been master; now though it had become servant, somewhat of the old fear of it remained.

The progress of democracy in the United States has witnessed a gradual realization by the people that government is the servant of their will and they have set it to work to perform a multitude of tasks in their behalf. At the same time the conception of "the people" has been steadily broadened through the extension of the suffrage and at the present time we are witnessing many efforts on the part of this democracy to remove all the hindrances which have been interposed to prevent the immediate realization of its will through governmental institutions.

CHAPTER II

EARLY EFFORTS TO SECURE POPULAR CONTROL

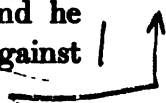
The Articles of Confederation had been adopted by the legislatures of the states, the members of the Congress had been chosen by the legislatures, and all important acts of the Congress required approval by the legislatures of at least nine states, while all changes in the Articles themselves necessitated acceptance by all of them. The Union under the Articles of Confederation was one of sovereign states to which the name confederation was aptly applied. The Congress resembled an assembly of diplomats who represented their states and not the people.


We have seen that the first real struggle in the constitutional convention took place over the question whether or not its labors should be confined to an amendment of the Articles of Confederation by which the character of the Union as a confederation should be preserved, or whether a different form of Union should be

sought in which the equality of the states as a fundamental principle would disappear. The victory in this contest was with those who believed that no sort of amendment would suffice, but that a new principle of union must be sought. In justification of this determination, made in the face of the resolution of Congress under which the Convention had assembled, it was decided to submit the constitution to the people of the states for adoption or rejection through conventions specially chosen for that purpose. These conventions were supposed to represent the people directly, while the legislatures represented the people as organized into states. There was no thought of a vote by the people of the states directly but only through conventions. Acceptance by conventions had been the procedure used by the states in the adoption of their own constitutions and it was not till a generation later that it became customary to adopt constitutions and constitutional amendments by direct vote of the people. Today there are very few state constitutions which were not submitted directly to the people for their approval.

When the Constitution was before the people for acceptance or rejection, a strong opposition

(to it was developed on the ground that it did not contain a Bill of Rights. In English history Bills of Rights were solemn compacts between the kings and the people in which the former recognized and guaranteed for the future certain rights of the people. In America they had found a place in several of the state constitutions as guarantees of individual liberty against the action of the government. Jefferson was one of the most zealous advocates of such a declaration of the limits upon governmental action, and strongly objected to the adoption of the Constitution because it lacked such a guarantee. Hamilton, on the contrary, maintained that a Bill of Rights in the Federal Constitution was unnecessary, 'inasmuch as there was no king whose oppression they need fear; it would be in the nature of a self-limitation which was superfluous as at every approach of tyranny in the government the people had only to elect other officials. Jefferson believed that the tendency of all government was toward the oppression of the individual and therefore such limitations were necessary even in a republican form of government.) Strong as he might be in asserting the right of the people to rule, Jefferson did not believe that a government

by the people could do no wrong. He feared even a democracy could be tyrannical and he wished to see the individual protected against government. 

As a result of the widespread demand for a Bill of Rights, it was practically agreed that the new constitution when adopted should be amended, and within two years after its adoption the first ten amendments, virtually a Bill of Rights, were accepted. 

The new government was inaugurated in the Spring of 1789. Washington was the unanimous choice of the electors and of the country for the first President, and acting in the spirit of a President of the whole country, he appointed to his cabinet men of opposing political principles. There were as yet no parties, but it was matter of general knowledge that Jefferson, as Secretary of State, and Hamilton, as Secretary of the Treasury, would have different conceptions regarding the nature and the functions of the new government. These differences were not slow in developing.

The Confederation had failed primarily from the lack of money; it had no power to levy and collect taxes, it could only ask for requisitions.

The new government had the power to levy and collect taxes, imposts and dues, and it was Hamilton's task to evolve its financial system. It was a stupendous task and upon its success depended the existence of the Union. Any financial scheme that he might devise was forced to care for the past debts as well as for the future expenditures. In masterly fashion Hamilton set about winning financial strength and the respect of the people for the new Union. In the first place, it was a self-evident duty that the foreign and domestic debt of the Confederation which had been incurred in prosecuting the Revolution, should be assumed, and measures to this effect were proposed by Hamilton and accepted by Congress. It was a far different matter, however, with the debts of the individual states, and their assumption by the Federal government was a great step toward securing for it a greater respect than attached to any state. The assumption of these debts by the new government, combined with legislation adequate to care for them, drew to the Union the support of the holders of these obligations; they found the success of the new government identified with their own personal fortunes; in the absence of any feeling of pa-

triotism and loyalty, the appeal was made to self-interest.

To meet what seemed to many a crushing burden of debt, Hamilton secured the passage of a custom's tariff and an excise measure, both highly productive of revenue without making direct demands upon the taxpayer and in consequence sure to be popular. Both continue to the present as the chief source of the Federal revenue. Finally, to complete his system of finances, Hamilton advocated the establishment of a government bank. Here for the first time, a difference of opinion arose which was not concerned with the merits of the proposed bank but with the power of the Federal government to establish it. The theory was universally accepted that the Federal government was one of delegated powers; that the Constitution contained the grant of all powers that rightfully belonged to it, and nowhere in the Constitution was the power to establish a national bank to be found. Yet, after the enumeration of the powers expressly granted, there followed these words:

The Congress shall have power . . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers

vested by this Constitution in the government of the United States, or in any department or officers thereof.

It was natural that Hamilton should have laid the emphasis on the word "proper" and Jefferson on "necessary." Hamilton believed in government, in its efficiency and efficacy. Human progress seemed to him to be conditioned by the orderliness of society and this orderliness of society by strength in the ruling authority. He was not afraid of the aggressions of government upon individual rights; on the contrary, he believed that individual rights could only be secured by the agency of a firm and well established authority. Jefferson's views were the exact opposite. He disbelieved in everything that Hamilton thought essential. Hamilton, as an officer of the government, was eager to round out his financial plans, so that both his theoretical views and his personal desires joined to make him see in the establishment of a national bank a perfectly proper means for carrying out the powers which had been delegated to the Federal government. In his advocacy of the bank, he developed the theory of the "implied powers" of the Constitution, the theory of "loose construction" as opposed to the doctrine of "strict construction" advocated by Jef-

person. To the latter, no power could properly be implied as belonging to the Federal government which was not absolutely necessary to carry out the powers expressly granted, while to Hamilton it was sufficient if the power were a proper one.

The struggle for the adoption of the Constitution had developed two parties, those who favored it because it gave hope of a union strong enough to exist, and those who opposed it because of the fear that it would prove too strong for the welfare of the individual states. After the adoption of the Constitution it was natural that the latter should wish to see the Federal government restrained within the narrowest possible limits and that many of them should be strict constructionists. Thus the germs of party division were present, though unremarked, from the establishment of the new government. The establishment of the National Bank and the theories of the construction of the Constitution which arose out of it, gave a sufficiently concrete case for division and very rapidly thereafter two parties formed under the leadership of Hamilton and Jefferson, entitled respectively the Federalists and the Democratic-Republicans.


The choice of a successor to Washington fell upon John Adams, a Federalist of very aristocratic temper. The violence of factional strife reached its climax in his administration and the Federalists felt driven by the bitterness of the attacks of their opponents to pass the famous Alien and Sedition Acts, aimed to protect the chief executive against abuse run riot, but which came dangerously near putting arbitrary power in the hands of the government. These measures were the culmination of the Federalist legislation, each step in which had come to be regarded as an aggression upon the liberties of the people. They were too extreme and brought overwhelming defeat to their authors in the next election. Likewise they called forth the Virginia and Kentucky Resolutions, adopted by the legislatures of these two states as protests. These protests set forth the theory that the states have the right to declare unconstitutional those acts of Congress in excess of its powers. The original draft of the Kentucky Resolutions which had been made by Jefferson and sent to his friend Breckinridge to introduce, contained the assertion of the right of an individual state to nullify within its boundaries any act in violation of the

Constitution, a doctrine made famous by Calhoun at a later period.

The campaign of 1800, which resulted in the overthrow of the Federalists and the triumph of Jefferson and the Democratic-Republicans, was a reform campaign the first of many, and the reformation sought was the restoration of the government to the control of the people and to its original limits. The Federalists were accused of having grossly perverted the original plan of the government and of having greatly exceeded the rightful limits of Federal authority, to the great detriment of the popular welfare and with danger to individual liberty. Jefferson was the champion of the rights of the people against those who would control government for their own interests, and this political cry proved as effective then as in more recent times, for the Federalists were swept from power in all branches of the government except the judiciary. The conservative element of society was shocked at the success of the masses and feared that the institutions which had been set up with such laborious efforts would be overturned. The victory of the radicals was viewed as a menace to all sound principles and policies, and there was great rejoicing that

the judiciary at least was saved. The victors soon found that it was a vastly different thing to be confronted with the task of actually running a government from merely indulging in criticism of others. Power and responsibility are generally sobering influences upon the radical who cries for change. Once in office there comes a new viewpoint which has converted many a theoretical radical besides Jefferson into a practical conservative.

So far as the powers of the Federal government were concerned, the new party did not curtail a single one of those of which the Federalists had made use; in no particular did they decrease the strength of the government. It seemed to change the whole character of these powers to have them exercised by Democrats (as they soon came to be called) instead of by Federalists. The freedom of construction by which power had been gained was left unmolested. In fine, the reformers did not reform, at least so far as the structure of the government was concerned. They did bring in an entirely new spirit, however, and this spirit was that of the democracy which was just beginning to feel its strength.



As time has gone on, it has more and more

realized its power and has sought to give it expression in the greater control of the people over government, but never in a lessening of the powers of the government. In this as in so many other particulars, the Jeffersonian democracy was a forerunner of the Jacksonian democracy and of the American democracy by whatsoever name it may be called. Hand in hand with the more direct control of government by the will of the majority there has gone a great increase in the functions of government. With the growing consciousness of power, the people have lost the fear of government which animated the framers of the Constitution, and they no longer follow Jefferson in the belief that the tendency of government is inherently toward the oppression of the individual. They have both accepted and rejected the teaching of Jefferson, and while seeking to make the popular will supreme, they have not sought to curtail its expression.

In the political philosophy of Jefferson there was a profound trust in the good sense of the great body of the people and a large part of his success was due to this attitude. Yet Jefferson had a profound distrust of government and sought to restrain it within the narrowest possible

limits, and as a restrictive principle he desired to introduce local self-government as widely as possible in order that the people might the more closely watch their officials. Human nature was all right when applied to the task of choosing representatives and deciding upon policies, but all wrong when set to carry out these policies from an official position. Jefferson accepted the traditional view of government as an instrument of oppression. Such it undoubtedly had been under the absolute monarchy which had succeeded the feudal system. Jefferson was not political philosopher enough to search history for an explanation of the phenomena of governmental institutions. Indeed, the study of history for such a purpose was not popular with the advocates of the rights of man; it was not in keeping with their philosophy to go beyond the a priori principles which reason had set up. Had he looked into history for an explanation, he would have seen that the absolute monarchy was a necessary phase in the development of the modern nation. A single strong power was needed to bring order out of the chaos which ensued upon the breakdown of the feudal system. Likewise, from such an historical view,

he might have been saved from the error of identifying the nature of all governments with that of the absolute monarchy and concluding therefrom that all governments were destructive of liberty.

Hamilton was far better versed in history, had read its lessons more truly, and saw more clearly than did Jefferson upon what the real character of government depended, and he declared that a strong central government would not be dangerous to liberty because of the control which the people exercised over it. Wherefore Jefferson accused him of being a monarchist, and of desiring to set up a king.


The triumph of Jefferson in 1800 seemed to presage the complete overthrow of Hamilton's theories. The Federalist party survived for a few years thereafter but it had lost its vigor, and died a none too honorable death after the Hartford Convention of 1814. It has often been said that the Democratic-Republican party swallowed up the Federalist, and the acceptance of the results of the Federalist policy has been assigned as the cause. But the real cause of the disappearance of the Federalists lay deeper than this surface acceptance of their policy. It lay in the fact that the triumphant democracy rejected that part /

of Jefferson's theory which taught that government was an evil and dangerous to liberty, and accepted the view of Hamilton that government was good or evil according to the forces that controlled it; accepting Jefferson's teaching that the will of the people was good and should be supreme, the people rejected the inconsistent part of his theory which declared their will bad as soon as it became active as the government.

The Jeffersonian Democracy, then, won its way to power on a platform which said that the Federalists had exalted the Federal government and that it must be brought low. Yet the victory was not made use of to fulfil the purpose proclaimed. It is true that government expenditures were reduced and a "chaste reformation of the army and navy"—to use Jefferson's own phrase—was inaugurated, but close upon the heels of victory came the daring act which gave us half a continent at the expense of theories. Viewed from the standpoint of the Democratic-Republicans, the Purchase of Louisiana was the [greatest stretch of Federal power that had yet taken place, for nowhere in the Constitution was there a delegation of authority to acquire territory, and such an acquisition could with ill grace

be regarded as necessary to carry out other powers which had been granted. Jefferson believed that his act was unconstitutional and proposed the adoption of an amendment to the Constitution to relieve the situation. Congress and the country accepted the Purchase and did not cavil about the Constitution so the amendment was not pressed.

The attitude of the Jeffersonian following toward the Judiciary is very enlightening. It was the only branch of the government which could not be captured by election and the thought of Chief Justice Marshall and his associates, the majority of whom were Federalists, continuing in that branch of the government the theories which had been rejected at the polls, was extremely bitter. Attacks of the most violent character were made upon its personnel and upon the method of its selection. It was declared to be an aristocratic institution and out of harmony with a democratic form of government. Moreover the Federal judiciary came into conflict with some of the state judiciaries through holding that the Federal laws and Constitution were supreme and that acts of the states must give way before them. There has been much discussion in the



course of our history concerning the right of the Supreme Court to declare laws unconstitutional and this discussion has been very active in recent years. Whatever may have been the intention of the makers of the Constitution in this matter, it was assumed by the authors of the Federalist that this power would belong to the Court. The revival of interest in the subject may be referred to the growth of the democratic feeling in the country, insisting that the will of the people should be supreme. It is an unconscious reflection of the growing popular tendency to sweep away all barriers and to change a representative republic into a direct democracy and may reasonably be connected with the demand for the recall of judges.

Whatever may have been intended, Chief Justice Marshall, speaking for the court in the case of Marbury vs. Madison, in the year 1803, settled the matter so far as the practice has been concerned. Arguing from the very nature of a Federal Union, with a written constitution declared to be the supreme law of the land, he showed that the power to declare null and void all laws in contravention of that instrument, was essential to its maintenance. The Nullifiers and

Secessionists declared that no such power belonged to the Supreme Court. Calhoun believed that to put it in the hands of the Court was to make the Federal government, through the judicial branch, the judge of its own powers, thus making the Government and not the Constitution the measure of the rights that had been delegated. But Calhoun and all those who followed him rejected the conception that the new union was a Federal State. To them it was still a Confederation. For more than a quarter of a century, the Supreme Court under the leadership of Marshall, maintained the supremacy of the Constitution, which was interpreted in harmony with the growing feeling of national unity and as the instrument by which a nation had been created. This was the spirit that lay back of Hamilton's financial measures and theories regarding the Union, and the hostility of the Democrats to the perpetuation of his theories through judicial interpretation is easily understood. The discordant elements in the national life had not yet become sufficiently antagonistic to bring matters to a crisis. The struggle was confined for the present within the Constitution and not until a later gen-

eration did it reach the point of demanding a dissolution of the Union.

The supremacy of the people under Jefferson's guidance was a protest against the extremes to which the Federalists had gone; it was the proclamation that the government should be returned to its original conception. Confessedly the government that had been established was a republic and it was moreover a representative republic. No principle was more fundamental than that it rested upon the consent of the governed, given through their representatives. But already the difficulty of securing a perfect harmony between the acts of the representatives and the will of their constituents was felt although it was not formulated in modern terms. When the government was set up, it seems to have been taken for granted that the mere fact of election at specific intervals, would be a sufficient guarantee of the responsibility of the representatives and we must remember that the Convention was not over eager for the immediate supremacy of the popular will. The passions of the people were far more frequently a topic of discussion than their virtues, and it was thought wise so to frame the government that ample time should be allowed for these

passions to cool before they could be realized in action. Yet within a dozen years the cry was raised that the will of the people must be supreme and that the responsibility to electors must be recognized. Jefferson, in one of his radical aphorisms, declared that where annual elections end, tyranny begins, and it was accepted as a matter of course that the correct method of securing responsibility in representatives was that of election, and that the more frequent the election the more direct would be the responsibility. It scarcely seemed open to question that in this way the people would retain complete control of the government and be able to realize their will most effectually. The principle was accepted as cardinal by the rising democratic spirit and its application was immediate and widespread.

Offices which hitherto had been appointive were made elective. The change from an appointive to an elective judiciary in almost all the states was due to this idea that the will of the people must be made effective and that election was the means through which it could be accomplished. The difficulty of amending the Federal Constitution proved sufficient to prevent a similar change in the Federal judiciary.



The application of the principle of responsibility through election, combined with the notion that governmental authority should be divided up in order to be safe, led to a decentralization of power in the states which has rendered them very poor agents for performing the tasks which have recently been laid upon them.

The executive authority was first an object of suspicion; the danger to liberty was thought to lie in it, with the result that the local units of government, as the counties, were made practically independent of state authority and the execution of state laws was in most instances put in the hands of the local officials who, being elected by the people of the local district, drew their authority from the ultimate source of all power. In the absence of any statutes placing them under the control or direction of the state officials, there was — an entire absence of administrative co-ordination and control. The legal responsibility of the local official was to a general law regulating his duties, and his political responsibility was to his constituents.

→ This decentralization of governmental authority was carried out, also, in the relation of state officials to each other. The governor, at the head

of the state administration, was deprived of all control over the state officials who would naturally be regarded as properly subject to his direction. Instead of having a cabinet, composed of heads of departments appointed and removed by him, the governor has a number of colleagues, each elected for a definite term by the same constituency which elects the governor. He has no authority over them and their responsibility is only to the laws which prescribe their duties and to the people of the state by whom they are elected.

The result of this policy of decentralization and election to secure responsibility has been to rob the people of all effective control over most officials and to make the officials responsible to a party organization or political boss. The people as a whole could not know all the candidates for all the offices and so they have centered their attention upon the most important offices, leaving the choice of candidates for subordinate offices to the party boss. Responsibility is thus shifted from the people who elect to the boss who nominates, when nomination by the successful party is the equivalent of election.

At the outset the successful operation of our

highly complex system of government was largely due to the simplicity of life. Simplicity either in life or in government is essential for the success of a democracy. Simplicity of life, social, political, and economic, was decreasing even at the time the Constitution was framed, and it has continued to decrease ever since, with every new invention that has contributed to the comfort and convenience of modern life. With the development of a capitalist class, of a society based largely on the possession of wealth, of great manufacturing interests involving an entirely new system of production and new systems of transportation and communication; with the increase of population and its concentration in large cities, the complexity of life has grown to almost terrifying proportions. While the life of the community was thus becoming more and more elaborate, government remained complex. That is to say, our forefathers framed a system of government and committed that framework to writing, and that the definite and rigid form thus determined might not be lightly changed, they provided a cumbersome and difficult method of amendment. (There was no place left for a gradual and natural change in the form thus rigidly set.

It was comparatively easy to amend state constitutions so that the state governments would be empowered to grapple with the growing complexity of affairs so far as function was concerned. In the case of the Federal government, we have been compelled to rely almost entirely upon the interpretation by the courts. In the main, this has proved reasonably satisfactory, thanks to the general terms used in the wording of the instrument to be interpreted. It is true, the courts have recently been strenuously attacked for their failure to keep pace with the times; we are told that these august personages are ossified, that they are out of sympathy with the needs of the new social conditions, and that this situation must be remedied. On the whole, however, we are to be congratulated that the courts have been so ready to enlarge the functions of the government by the process of interpretation.

While it has been relatively easy to provide government with the powers necessary for the increasing duties forced upon it by the development of the country, there has not been an equal facility in modifying the form. It has remained fixed in all essentials and fixed in complexity, so that we now have an elaborateness both of life

and of government. The result has been a poor and inefficient government, inadequate control by the people, and the general discouragement of many good persons who, after repeated vain efforts to secure an accurate reflection of public opinion in the policies of government, reached the conclusion that democracy itself was at fault, when the real trouble was with the particular form through which the democracy sought to act. So well balanced were the various branches of government in our system that no one part of the mechanism could give the controlling impetus to the rest. The logical result was a friction of the disagreeing elements upon each other, save in the rare instances when all felt impelled in the same direction.

This difficulty in securing action was in entire accord with the theory of a very restricted sphere of government influence, but was out of harmony with the actual conditions. Disaster was averted by the development of political parties which served as a unifying force throughout all departments of government. Parties were national in their extent and so exerted their influence all the way up from city to nation. Thus outside of the constitutional arrangements, there was de-

veloped an agency to make these arrangements workable, and, in the main, parties have performed this function satisfactorily.

In recent years we have found much fault with parties and party organization and have attempted numerous changes, not only to give the people control of them, but also to lessen their power and influence.

The people have not realized that the form of government of which they have been so proud, and the principle of election which has been regarded as fundamental in democracy, are largely responsible for the failure to achieve the supremacy of their will in affairs of government; they have not realized that it is the complex nature of our government which has made it so difficult for the people to govern and so easy for smaller groups to govern in their own selfish interests. Failing to appreciate the necessity of making government as simple as possible, almost all reforms seem to have been conceived in the spirit of making government more complex. The theory that the separation of the powers of government was necessary to preserve liberty has influenced the whole conception of government and consciously or unconsciously, complexity has been added to

complexity that no one might control government and crush out liberty. Yet this very complexity has put government into the hands of the few and it will never be reclaimed by the people until it has been made simple. Simplicity is
|| essential to responsibility and efficiency.

CHAPTER III

THE NEW DEMOCRACY OF THE WEST

From the standpoint of our present experience of parties it seems that the framers of the Constitution were singularly blind to one phase of political life that has been of tremendous consequence in the development of our institutions. No conception of a system of parties such as we know had developed up to that time even in England nor was any intimation of it foreshadowed in the discussions of the Constitutional Convention. Much was said at the time about factions and the evils which they brought upon republics, but not a word about parties in the modern sense. Perhaps it would be expecting too much of the "Fathers" to demand that they should have foreseen and made provision for this new phenomenon yet there were already present the elements out of which parties were to be constructed. During the War of the Revolution there had been Whigs and Tories, and after the war was ended

there were those who wanted a strong central government and those who did not; those who advocated the adoption of the Constitution and those who opposed it. When the Constitution had been adopted and discussion arose over the nature and extent of its powers; when the divergence of views between Hamilton and Jefferson found expression upon the question of the constitutionality of the National Bank, and when the doctrines of "loose" and "strict" construction of the Constitution were formulated, the basis of two national parties was laid. It was natural that many of those who had opposed a strong central government and many who had opposed the adoption of the Constitution should find themselves united in opposing the doctrine of "loose construction" by which the powers of the Federal government would be enlarged.

The leaders of the respective parties were Hamilton and Jefferson; the latter had a truer perception of the political truth that where the decision was made by ballots, the victory would rest with the greatest number and that to secure that number organization was necessary. Accordingly he set to work patiently and with great shrewdness to gather together for concerted ac-

tion all those who either from principle or from personal consideration, were opposed to the plans and policies of the government. The platform upon which the fight was made was that of restoring the Federal government to its original limits and of giving the control of it into the hands of the people. Jefferson was successful in creating the impression that those who were in control of the government were administering it without regard to the will of the people.

As early as Jefferson's first election, the people were sharply divided into the two parties, the Federalist under the leadership of Hamilton and the Democratic-Republicans under that of Jefferson. The election of Adams four years previously made it evident that the method of choosing a president could not be successfully carried out under the plan provided by the Constitution. The theory of indirect election by the electors was that by this method the best man would be chosen. It seemed reasonable that a choice by picked men would be better than a choice by the whole people, but by the election of 1800, the presidential elector had lost his own freedom of choice and felt bound to vote for his party's choice.

The machinery for determining the party's choice became a necessity as soon as parties were formed for without such a determination there could be no certainty of centering the party vote upon a single individual. To accomplish this end use was made of the "caucus," which has early developed as a means of focusing the votes upon certain candidates for local offices. Nomination by caucus of the members of the legislatures belonging to the respective parties soon became an established institution.

It was not long, however, before the Congressional Caucus began to be looked upon with disfavor as depriving the people of all real choice. The choice of candidates being in the hands of the caucus, the only thing left for the people to do was to choose between the candidates presented. There was no responsibility to the people on the part of the caucus which was a self-constituted body. The system was bad from the standpoint of a government by the people, and dissatisfaction with the legislative caucus led to its abolition and in its place was substituted the nominating convention which was in general use by the close of Jackson's second administration. From top to bottom of the political machinery

the convention was introduced as a means of giving expression to the will of the people in the choice of candidates. The nominating convention was an adaptation; it was the making use of an instrument designed to express the will of the people in formulating, adopting, and amending constitutions, for the new purpose of nominating candidates. The theory in each case was that of a body of representatives especially chosen for a particular purpose; the members of the convention being chosen directly by the people were regarded as incorporating in themselves the whole body of the people in a way similar to the theory of the British Parliament as the embodiment of the people of the realm. The nominating convention has lasted for about three-quarters of a century, but long before its loss of power and position, it ceased either to be or to be regarded as a successful means for the expression of the popular will, and years of agitation against it as the bulwark of boss rule is just now resulting in the introduction of the direct primary, another effort to restore the control to the people.

Hand in hand with the attempt of the people to organize into parties and to construct the early party machinery, there went a steady movement

toward enlarging the democracy. It was a logical result of the principle of popular rule that there should be an irresistible demand to increase the number of those who might participate actively in the affairs of government. If all men were born ~~free~~ and equal and all just governments derived their powers from the consent of the governed, what justification could there be for a property qualification either for voting or for holding office? How could the profession of one religious belief qualify and that of another exclude a man from a share in the making of government? Step by step, the restrictions upon the suffrage and office holding were removed until practical manhood suffrage existed. The logic of the democratic principle of popular rule and the practical considerations of party politics worked together toward a widening of the circle of voters. In the end the demands of party were of far greater consideration than the principle of justice in securing the admission of wholly unqualified voters.

From the earliest days of English colonial settlement in America the influence of climate and the fact of a new country to be subdued to the uses of man, were all on the side of democracy.

Where land was to be had for the taking and where fish and game abounded, it was difficult to maintain any sort of social distinctions. The adventurous spirits moved on and set up new communities in which life might be raw and crude but in which, for that very reason, a rough equality was found.

With the conclusion of peace and the recognition that the country as far west as the Mississippi was open to settlement, a steady migration set in. Economic conditions were bad at the close of the war and many felt driven to try their fortune in new places. West of the Alleghanies, these new communities rapidly developed into such consequence that territories and then states were formed in quick succession and admitted to the Union. The spirit of these states was very different from that of the original ones along the Atlantic seaboard. It was more national and less local. They knew no existence outside of the Union and the Union was of more consequence to them than any individual state. The rough social equality and the strong spirit of self-reliance developed by frontier life, combined with their love of freedom, produced a new attitude toward government. Manhood suf-

frage existed almost from the beginning; but it was in respect to office holding, to the business of carrying on the government, that the distinctive attitude of these new communities was most evident. Their government was as simple as their life and the belief soon arose that any average man was capable of carrying on the business of government. Special training as a qualification for government service was unknown. In a country where there was slight opportunity for education it was not unnatural that it should have been deemed of little consequence in affairs of government. Thus in the Western states a new theory of democracy was being formulated and practiced, and in course of time it passed out of the circumscribed limits of the new states of the West and made itself master of the nation.

Jefferson was a philosopher who took pleasure in speculation and the formulation of ideas in telling phrases. He was a lover of the Rights of Man and of the whole revolutionary propaganda of his time. He was cultured and refined and the democratic doctrine which he advocated had somewhat of the flavor of his refinement. There was nothing crude about it and it soon attracted to itself the best talent of the country. Though

the Federalists predicted dire disaster from the success of Jefferson in the election in 1800, their forebodings were not justified. Government and society moved on much as before and it was evident that the new order of things differed but slightly from the old; the chief difference lay in the fact that a new set of men was in office and not in any new or startling change in the course or conduct of government. It has become a commonplace of our history that the Democratic-Republican party absorbed the Federalist party within a dozen years. This could not have taken place if the successful party had not been composed of the same kind of men, thinking in the main the same kind of ideas, and led by the familiar figures of the days of the Revolution. There was no real break with the past when Jefferson was elected. There was no new element introduced into politics and no untried principles. There was only a harking back to the principles of the Declaration of Independence and the ideas of the "Fathers." For all that Jefferson had to say about the people as the source of power and authority, there was a strong feeling that the leaders, men of training and education and social position, should direct the masses.

It was a democracy in which theoretically the majority ruled but in which in practice the leaders were to direct an acquiescent majority.

The representatives of the new spirit of the country began to make their appearance in the national life just before the War of 1812. In fact the declaration of that war was due to them. Clay, Calhoun, and Crawford were among the new leaders who appeared upon the scene, and the old leaders of the generation of the Revolution were never again in full control. It was these new men and their new spirit that forced President Madison into the war, although it was known to be against his inclination. The war itself brought into national prominence the man who, a decade later, was to typify in himself and crystalize about himself the social and political democracy of the West. Andrew Jackson, the military hero, was eclipsed by Old Hickory, the friend and champion of the people.

The new leaders were far more national in their feeling than was the older generation. The United States meant more to them than any individual state. They had grown up under the influence of that well nigh reverential respect in which the Constitution had come to be held. The

effect of the war was to strengthen the feeling of national unity and solidarity. As against the enemy it was one country and national patriotism had been awakened as only a war can awaken it. Henceforward for a generation the thoughts of men turned toward the greatness of the country as a whole. Some vision of the Future began to dawn on them, of a country stretching from ocean to ocean and a power which should rival any of the old world. This spirit of national patriotism had a tremendous influence upon the great struggle of the Civil War in which the principle of democracy, that the majority shall rule, was to be determined.

The War of 1812 was the first great impulse toward the spirit of a nation. The way had been prepared by the course of development which had preceded, but the war brought home the consciousness of it. At its conclusion there set in a period of peace in domestic politics, called the Era of Good Feeling, which reached its climax under Monroe and was due to the absence of any real issues. The old lines of division had gradually lost their sharpness as the Democratic-Republicans adopted and put into operation the principles of the Federalists. The two parties

slowly amalgamated until, after the War of 1812, only one party was left. The old issues upon which the first great party struggle had been waged, had centered around the powers of the Federal government. The Federalists believed in a "loose construction" of the Constitution in order that the national government might have adequate power and authority. The Democratic-Republicans had driven them out of power by advocating the opposite doctrines. Yet the principles of the Federalists were those which triumphed in the end. The force of circumstances, the mere fact of being in power, the constant growth of the Federal government in the favor and affection of the people, the decisions of the Supreme Court under the leadership of Marshall establishing the national character of the Union, and finally the War of 1812, were forces of development which outweighed all party platforms and brought about a general acceptance of Federalist principles. It was a period when the worship of the Constitution and of the Republican form of government was at its height. New issues and new lines of cleavage lay just ahead but for a time harmony prevailed.

This period however was brief. In the absence

of adequate issues to separate the people into parties, there sprang up parties based upon personalities,—factions rather than parties, centering about the leaders. There was the party of Clay, of Adams, of Calhoun and of Jackson, and the election of 1824 was fought out among these factions. Andrew Jackson received the largest number of votes in the electoral college but not a majority of all the votes cast, and when the election was thrown into the House of Representatives, a combination of Clay and Adams resulted in the election of the latter. Thereupon the Jackson men raised the cry of “bargain and corruption,” inasmuch as Clay was made Secretary of State. This bargain and corruption, it was claimed, had resulted in defeating the clearly expressed will of the people. Jackson had received the largest number of votes and therefore should have been chosen by the House. A failure to choose him was a deliberate thwarting of the people. It was the grossest violation of the sacred principle of democracy; it was an insult to the people and what was of no less consequence, to the Hero of New Orleans himself. Revenge would be doubly sweet as vindicating both the people and Jackson. Thus was the hue and

cry raised by the Jackson men. They so filled the public mind with their view of the transaction that it was not long until the election of Jackson became identified with the vindication of democracy and the will of the people. Popular rule, they said, was endangered by such a betrayal and only the sternest of rebukes would prove effective.

Jackson was an ideal figure around which to center a fight in behalf of the people. He was identified in life and in feeling with the new democracy of the West, a democracy entirely different from that of Jefferson. It was crude while that was finely finished; it was based on wide suffrage and frontier ideals, while that rested upon a restricted suffrage and the best colonial traditions. The one was a real reflection of the opinions and feelings of the masses, the other of the leaders of a limited number. Jackson was reared amidst conditions which developed the rougher qualities of his nature. His boyhood witnessed poverty, the loss of parents, the misfortunes of war; his early manhood, the roistering dissipations of the times. After pursuing the study of the law, he left his home in North Carolina and crossed the mountains to become prosecuting attorney for the Mero district, sub-

sequently a part of Tennessee. Settling at Nashville, Jackson soon established a reputation for courage and aggressiveness which gave him high place in a community in which these were the virtues most admired. Physical strength and personal bravery were important, if not absolutely necessary, for distinction in life on the frontier. Jackson prosecuted the criminals, engaged in tests of strength, raced horses and fought game cocks, killed his man in a duel, married, prospered, was Tennessee's first Representative in Congress, Senator, Justice of the Supreme Court of Tennessee, and Major-general of Militia by the time he was thirty-seven. He then retired from public life to become a farmer and a merchant and but for the War of 1812 might have remained an obscure figure in a new and rough community.

When war was declared Jackson, as Major-general of Militia, achieved undying military reputation in the defeat of the British at New Orleans. This military reputation was carefully cultivated and kept alive by the war with the Creek Indians, so that with the help of a skillful political manager, Jackson was a national figure at the Presidential election of 1824. He himself

protested that he was too old to enter the race for the Presidency, but having once yielded to the persuasion of his friends and become a candidate, all the fire and tenacity of his spirit were enlisted in the fight. Upon his defeat, as earlier narrated, the desire for vengeance wiped out all personal objections and henceforth his career was directed toward the overthrow of the men and forces that had opposed him.

So much has been said about the career of Jackson because it makes intelligible the trend of the popular movement. It shows the manner of life that gave birth to the new ideas which Jackson's election introduced into the national government. There is no possibility of understanding these ideas unless we see behind them the social and political conditions out of which they developed. Jackson was truly a man of his times; he is not one of the great figures of history who have risen superior to their surroundings; he was great because he was the embodiment of his age. The type of character developed under these conditions has been sufficiently indicated. Self-reliance, an ability to supply oneself with the ordinary necessities of life, a great skill with tools and weapons, a readiness to turn one's hand

to almost any occupation, a facility in passing from one vocation to another; all these characteristics had their effect upon men's attitude toward government. That, too, was something to which most men might turn with a reasonable degree of success, for, like the rest of the frontier life, it also was simple. This conception of government was fundamental in the whole attitude of this generation and was the immediate product of the social and economic conditions of life which the settlement of the new country had produced. It was a Western in contrast with the Eastern democracy of which Jefferson was the representative. The spirits of the two periods are as different in character and temperament as were Jackson and Jefferson.

With the defeat of Jackson in 1824, the period of the single party came to an end. This era was abnormal in the life of a democracy and it was soon followed by a sharp division among the people. At first the supporters of Jackson were known simply as "Jackson men," but in a short time they took for themselves the popular designation of Democrats—that part of the name of the Jeffersonian Democratic-Republican party which had fallen into disuse. This very fact was

significant. They claimed to be the party of the people and to represent the great mass of the plain folk. In time the party came to represent the opposition of the masses to the classes. Jackson's fight upon the Bank was felt to be for the freedom of the great body of the people whom the Democrats professed to believe were in danger of being permanently enslaved by the moneyed classes.

When Jefferson was elected in 1800 there were many predictions of dreadful calamities ahead. The Federalists proclaimed that the stability and permanency of our institutions were menaced by the success of the radicals. Yet these prophecies were not fulfilled. Beginning with the conciliatory attitude of Jefferson's inaugural, the causes for alarm were rapidly dissipated, for it was soon realized that the control of the government was in the hands of the same social class. When the Federalist party had disappeared and the Era of Good Feeling set in, the men in control of the government undoubtedly felt more secure in their tenure of office than would have been the case had there been a sharp division of parties. The result of this feeling of security led by imperceptible degrees to the attitude that the office in

some way belonged to the man and, as a consequence, the conception of office as a public trust was weakened in the minds of office holders. Long continuance in office under such conditions produced a laxity in moral standards that led to much inefficiency if not corruption. To attack this state of affairs was good politics and the Jackson men lost no time in raising the issue in behalf of the people. Had they not been defrauded by the bargain and corruption between Adams and Clay, the unholy alliance, in the biting invective of John Randolph of Roanoke, "of the Puritan and the Blackleg, of Blifil and Black George"? And were not these men the very ones who had fattened on office until they regarded it as their right and any control by the people as an unjustifiable interference?

However little or much the Jackson men believed such a condition to exist, they gave it a prominent place in their party platforms. To rail at the opposition on the score of indifference to the will of the majority and for holding themselves superior to the desires of the common people, was as popular with the masses as abusing the Federalists for monarchists had been in Jackson's time or as attacking Wall Street and

the Trusts in our own day. This idea that the office-holding classes had become indifferent and had assumed to themselves superior wisdom because they were office holders, provoked strong condemnation among men who regarded the business of government as one which the average man could easily master. The leaders of the new movement were Western men and they had a certain contempt for the refinements of the East, for that in which they were themselves lacking. It was crass provincialism but there was great strength in it. Undoubtedly, too, the defeat of Jackson in 1824 was made to seem due to the fact that he was new and from the West and of the plain people. And as the champion of their rights, which had been so grossly disregarded in his defeat, he made his campaign. By 1828 the popular party was fairly well solidified and the triumph of the people's candidate was overwhelming.

It is difficult for us to realize how strong was the feeling that with Jackson's election the people had again come into their own. We can gain some conception of it from the way in which they flocked to Washington and took possession of the White House; from the way in which the

refinements of life were swept away, and the simple and often crude fashion of the West introduced. In striking contrast to Jefferson's election, Jackson's entry into office signaled the introduction of a new order of men into the control of the national life—men from an entirely different social class, men more distinctly of the people. The Jeffersonian democracy was one of theory, the Jacksonian of practice. The former had its origin in the philosophy of a radical thinker, the latter in the manner of life of a frontier people.

Again as in 1800, the better classes socially were alarmed at the hordes of democrats who poured into Washington, both those who had been elected and those who sought appointments. Again grave fear was felt over the radical changes which the new government might undertake, and this time the fears were not without foundation. The only effect of Jefferson's election had been a little less formality in intercourse, a little greater simplicity in the tone of life. Jackson brought in radical changes in the policy of conducting the government and in the social and political life of the Capitol. In the first place, it was necessary to make the people feel

in a concrete way that they were really in control; that the government, the offices, the buildings, all belonged to them. We have referred to the throngs which poured into Washington and how they took possession of the White House. But this would not have been sufficient. More tangible rewards were demanded and the principle that "to the victor belonged the spoils" found ready acceptance. It both furnished the necessary rewards and removed from office those who had been so bitterly attacked as heedless of the popular will and corrupt in their security. It became a recognized and generally accepted theory of the Democrats that "rotation in office" was essential to a democracy. By its application the feeling of ownership of office, the disregard of the people, and the ensuing corruption, could not develop because of lack of time. "To the victor belonged the spoils" was a practical platform of which the principle of "rotation in office" was the theoretical support. Both were in accord with that deep feeling of self-reliance and general efficiency which made the average man think himself quite competent for the simple business of government.

In yet another way Jackson made his election the triumph of the people, for if they had been

tricked and defrauded by his defeat, they had been gloriously vindicated by his election; if they had been deprived of their rights then, they had come into them now. He was their direct representative and as such he proceeded to speak and act. In him the will of the people was incorporated. To such an extent was this carried out that the Executive assumed proportions in the scheme of government never before attained. We are now familiar with the view that the President is the direct representative of the whole people and as such is more influential than Congress or the Supreme Court, but in Jackson's day it was a novelty which excited alarm. It was feared that such a conception of the position of the President, if applied to the scheme of government, would upset the balance so carefully planned. Jackson boldly claimed an equal right with the Supreme Court to interpret the Constitution, and Congress was overshadowed by his great strength as the popular representative.

The democracy had at length felt the force of the power of numbers, and the rule of the majority became the cardinal tenet of faith.

CHAPTER IV

CIVIL WAR AND MAJORITY RULE

From the time of the adoption of the Constitution there has been a line of cleavage running through the people, separating them into two parties, one desiring a strong central government and a liberal construction of the Constitution and the other a weak central government and a strict construction of the Constitution. The latter was at first composed of those who believed in as little government as possible and of those who sought to exalt the states rather than the nation.

In the Constitutional Convention the party in favor of maintaining the rights of the states as against the Union which they were seeking to establish, was so strong that it threatened to disrupt the Convention and prevent the formation of a constitution. When the new government was inaugurated, more than one state felt itself superior to the central government. De-

spite the rapid growth of the latter in the respect and affection of the people, there remained a strong element always ready to seize upon this feeling of state loyalty and to use it against the nation. Jefferson, ardent advocate of local self-government, found it convenient to make use of this feeling against the Alien and Sedition Acts through the Virginia and Kentucky Resolutions. In the draft which he prepared for introduction in the Kentucky legislature, the right of a single state to nullify a law of the Federal government was proclaimed, but the Kentucky legislature went no further than to declare that the states had such a right. It is doubtful if Jefferson would have taken such a radical position after his own presidency and his intimate friend and successor in the presidential chair, James Madison, was at great pains to prevent Jefferson's name being lent to the support of Nullification when Calhoun made the issue acute. But whether he would or not, the name and fame of Jefferson were made to do service in defense of this doctrine, so destructive of the supremacy of the Union and so hostile to the principle of majority rule.

It was the tariff policy of the nation which first brought a clash between the nation and a

state. From its inception the tariff had been proclaimed as a measure for the protection of the industries of the country, but it was not until the War of 1812 had produced a large crop of infant industries that its protective character became pronounced. The factories which sprang up as a result of the war were located in the North and the benefit of the tariff accrued to that section, while the South, as an agricultural community, found itself sending the produce of its fields, by this time given up almost wholly to cotton, to a foreign market and purchasing its manufactured articles at a price determined by the tariff. The situation came to be regarded as iniquitous and the tariff as a legalized means of robbing the South.

John C. Calhoun stands out as the great protagonist of the South and its "peculiar institutions," but he is likewise far above his contemporaries as a constructive political thinker. In his fight in behalf of the South he developed a theory both of the nature of the Union and of democracy, which, though rejected by the country as a whole, formed the basis of Southern action until the close of the Civil War. In his early political career Calhoun was an ardent

advocate of the War of 1812, a supporter of a protective tariff, and a defender of the policy of internal improvements, all indicative of a strong national feeling. In course of time, however, the economic policy of the government assumed a tyrannical aspect in his eyes in view of the results which it was producing in South Carolina and the other cotton raising states. He himself tells us that he turned to the Constitution to find a remedy for this deplorable state of affairs. The result of his search he gave to the world in the theory of the Constitution as a compact and of the Union as a Confederation. The practical application of this theory was the Nullification by South Carolina in 1832 of a tariff law of the United States, and Secession a generation later.

Briefly stated the theory of Nullification rested upon the assumption that the Constitution was a contract or a compact, entered into by the states as sovereign political bodies; by its terms a government had been established and certain powers had been conferred upon it in order that it might serve as the common agent of the states in the matters which had been delegated to it. From this standpoint the Federal government was not the government of a state, separate from each

state yet compounded of them all; it was merely the organ of the states for the performance of special tasks. If any question should arise concerning the duty or the right of the Federal government to perform a particular task, the decision could not properly be given by the Federal government itself, through any of its departments, since this would make it the judge of its own powers and make its wish and not the Constitution the measure of these powers. The decision could be given only by the states through the process of amendment. If any state felt that a law passed by Congress was in violation of the Constitution, it might nullify that law within its boundaries and it would remain null and void if the states, by the process of amendment, did not expressly confer the power in question upon the Federal government.

The attempt by South Carolina to apply the theory of Nullification showed that in practice a very small minority of the people would be able to control the action of a large majority. This result was both undemocratic and in direct opposition to the strong national feeling which had been developing. Jackson met the issue squarely in his proclamation when he declared that he

would use the armed force of the nation to compel the submission of South Carolina, but a compromise was arranged in Congress by which South Carolina secured the reduction of the tariff which she had sought. It might have saved the country from the Civil War if the question had been settled without a resort to compromise.

Though the difficulty was adjusted the question which had been raised had not been settled. Calhoun saw this and felt the need for a more thorough theoretical establishment of the view which he had elaborated regarding the nature of the Union. There was need, too, for the refutation of the view which interpreted democracy as the rule of the numerical majority. Calhoun regarded a simple numerical majority as no better than brute force, capable of the greatest tyranny, and the conduct of the numerically stronger Northern states in passing legislation conducive to their own well being at the expense of the South as an excellent example of this tyranny. In place of the numerical majority, Calhoun substituted a theory of the "constitutional" or "concurrent" majority. But first it was necessary for him to show that the foundation upon which the theory of the numerical majority rested was wrong.

"It is a great and dangerous error," he says, "to suppose that all people are equally entitled to liberty." To Calhoun there is no such thing as an inherent and inalienable right to liberty, but liberty is a reward to be earned—a reward reserved by an allwise Providence for the intelligent, the patriotic, the virtuous and the deserving. Closely connected with this error regarding liberty is another, not less great or dangerous, which makes perfect equality necessary to liberty. Both of these errors have their origin in the view "that all men are born free and equal—than which nothing can be more unfounded and false." The opinion that all men are born free and equal is the result of a belief in a state of nature which preceded the establishment of society. Such a state of nature Calhoun rejects as inconsistent with the preservation and perpetuation of the race; instead of being a state of nature it is the condition most repugnant to man's feelings and most incompatible with his wants; Calhoun believed that man was by nature a social animal and that he was born into society and subject to authority.

Having rejected the theoretical basis upon which the supremacy of the numerical majority

had been made to rest, Calhoun proceeds to the construction of his theory of the concurrent majority. Starting from the premise that the tendency of government is to oppression and abuse of its powers, the primary necessity is for some means to counteract or control this tendency. The suffrage alone will not do it, for it can do no more than transfer the actual control over government from those who make and execute the laws to the body of the community. If the interests of each and every portion of the community were the same, then any law which oppressed one part would oppress the whole and the right of suffrage would be sufficient to counteract the tendency of government to misuse its powers; but it is evident that the interests of a community are not the same and that a law which is much to the advantage of one party may be greatly to the detriment of another; since the primary purpose of government is protection, some means must be devised by which the injured part may protect itself; the only method by which this can be effected is "by taking the sense of each interest or portion of the community, which may be unequally and injuriously affected by the action of government . . . and to require

the consent of each interest, either to put or to keep the government in action." Only by such an arrangement will it be impossible for any one interest or class or order or portion of the community, to obtain exclusive control of the government and to oppress the others.

Such a view of democracy was rejected by the American people since it was based upon the rule of the minority and not of the majority. To Calhoun it seemed the principle necessary to maintain liberty, and it is the only attempt in our history to interpret democracy in any other terms than those of mere numbers. It was an attempt to turn back the time of popular control of government and it failed.

Though the colonies were closely related by ties of blood and language and a common heritage of English civilization, yet their interests were divergent and the course of their development after the formation of the Union and the adoption of the Constitution forced them steadily farther apart. The effects of soil and of climate and the resulting economic differences between the North and the South contributed more than all other factors, perhaps, to the difference in attitude toward society and government which pre-

ailed in the two sections. Colonial jealousies were succeeded by state rivalries and the difficulties of travel and communication made it impossible for the two sections to know and to understand each other. Moreover tillers of the soil view with hostile eye the worker in the shop and the factory; agriculture and manufacture are world old rivals. The soil and the climate of the Southern states were pre-eminently suited to agriculture while those of the Northern states as naturally turned the inhabitants to commerce and manufactures.

Though the Declaration of Independence asserted that all men were created equal, slavery was even then to be found in all the colonies and its existence was recognized by the Constitution; but slavery did not thrive in the North and gradually disappeared. That such would be its fate in the South also, seems to have been the general expectation until the invention of the cotton gin made the production of cotton on a large scale possible and profitable by the means of slave labor. From that moment the institution of slavery was fastened upon the South until it was overthrown in the struggle for the preservation of the Union whose existence had been threatened by it.

In the early days of the Republic southern statesmen regarded slavery as an evil and condoned, rather than justified, its presence. With the invention of the cotton gin and the production of cotton as a staple crop, a change gradually took place in their attitude and slavery in time was defended as a "positive good." This defense of slavery marks a change in the social and political conditions of the South, a change which gave rise to the view that the highest type of civilization was that which rested upon slave labor. The Greek conception was revived and the Greek argument that such a composition of society gave the freemen the opportunity and the leisure for culture and public life which otherwise would have been lacking, was repeated. In both cases there was a small ruling class, with equal political rights, which constituted a sort of aristocracy. The feeling in the South was strongly aristocratic; it was exclusive and superior while proclaiming itself democratic. The whole political and social development in the South had been hostile to Democracy, meaning thereby the rule of the numerical majority.

The divergence in economic development between the North and the South and the presence

of slaves in large numbers in the latter, could not fail to produce a different social life in each section out of which there grew different conceptions of government and of democracy. The irrepressible conflict had begun; out of it in the end came a nation wholly free, in which the principle of majority rule triumphed as never before in the history of the country.

Though the slavery question was the immediate cause of the Civil War, the real issue at stake was the sort of government which should prevail. Was there to be a Democracy of freemen united into a single Union or were there to be two countries, one slave, the other free? At the outbreak of the war the question of the extension, or even of the existence of slavery, was pushed into the background and the preservation of the Union was uppermost in the public mind. Jackson's famous toast in the days of Nullification, "The Union! It must be preserved," might have served as the battle cry of the Union arms. Calhoun's toast on the same occasion, "Liberty! Dearer than Union," animated the spirit of the South.

The victory settled for all practical purposes that the Union was indissoluble, that Secession was impossible, and that by the Constitution a

great state had been created, embracing all the states, and that in it the principle of majority rule should prevail even at the cost of civil war.

The existence of slavery in a free country was an anomaly which could not endure forever. The Declaration of Independence had laid the foundation for its overthrow in the assertion that all men are created equal. This principle is the logical foundation both for the abolition of slavery and for the supremacy of mere numbers. Few have sought to give the words a literal interpretation, for it is in violation of our reason to claim equality in all respects for all men, but their application has been limited to the field of law. All men are born equal before the law. It is a doctrine aimed at class distinctions supported by law and had its modern origin in the spirit of rebellion against the power of kings and nobles. It was eminently proper for the new Republic to proclaim such a principle inasmuch as all royal and hereditary powers and privileges had been rejected. But leaving out of consideration the existence of slavery, the legal equality of all men was far from assured. In the field of political activities there were religious, property and educational qualifications which produced great inequalities among the citizens.

As has already been pointed out, these legal inequalities in the form of restrictions upon a man's ability to vote and hold office were rapidly removed in the years following the election of Jefferson. In the Western states they never gained a foothold. The removal of these inequalities was the first work of the Democracy in seeking to realize its ideals, and when the work was done the next step witnessed the actual control of the government by the newly enfranchised masses in the Jacksonian Epoch. But already the development of the national life was bringing other problems. Greatest of them all was that of slavery. The solving of this problem through Emancipation and the Thirteenth Amendment resulted in removing the glaring conflict between our theory and our practice. The equality of man had been attained to the extent that all men were now free but the negroes were lacking in all political rights, and the radical spirit of the North, in disregard of experience, resolved upon the enfranchisement of the newly liberated slaves. The Thirteenth Amendment might bring freedom and the Fourteenth civil rights, but they were deemed insufficient to guarantee the negro against oppression. So, avowedly

to furnish him with the necessary protection, the Fifteenth Amendment was adopted by which it was provided that the right to vote should not be denied or abridged by reason of race, color, or previous condition of servitude.

The enfranchisement of the negro as a means for his own protection would never have been contemplated but for the theory of democracy which had been accepted in the North and West, that all men were equal. The theory had found practical application in the spoils system and rotation in office, and now it was to be extended to the whole nation in universal manhood suffrage. The previous development contributed much to the failure of the North to realize that to put the ballot into the hands of the liberated slave was to introduce an era of political corruption unparalleled in history. A few vindictive spirits may have sought to humble and to punish the South through negro domination; but the mass of men who supported the policy were not moved by such motives.

We can scarcely realize that men should have seriously advanced such an idea or have so far lost sight of the realities as to have placed in the hands of the ignorant blacks the highest privi-

lege of citizenship. From the outset the belief has been strong among us that education is essential to the welfare of the Republic and a great public school system has been developed to train future citizens. An intelligent public opinion is fundamental in a free country and this lapse from it can be accounted for only upon the ground that the Jacksonian theory of equality had become sadly perverted.

The idea that the evils of government would be abolished by the introduction of what was then called universal suffrage was widely accepted. Government as a concern of the few was being replaced by the conception of government as the business of the many. The trouble, it was said, was in a too restricted electorate and gradually all limits upon manhood suffrage were removed. This notion was the result of a natural reaction against the old conditions of government under the monarchy when the determining voice in matters of government rested with the sovereign alone or in conjunction with a few nobles and a small favored class.

A similar movement was in progress in Great Britain and by successive stages the suffrage was extended to ever widening circles until manhood

suffrage was practically attained. The same tendency was to be seen in other countries also, in which the struggle for popular control of the government was being waged. Upon the theory that all men are equal before the law, there was no logical stopping place short of manhood suffrage. This was insistently demanded for and by those who were excluded, but the removal of restrictions on the right to vote and the admission of great numbers of ignorant and untrained men not only did not remove the evils of politics but, on the contrary, greatly increased them. It has been pointed out already how this process of extending the suffrage affected political parties and was reacted upon by them. The parties sought popular favor by advocating universal suffrage and every addition of an untrained class of men to the voting population demanded a closer organization and a stricter discipline of the party in order to win, and victory was imperative since only by it could the rewards of office be gained. By the time the process was complete and manhood suffrage had been attained, the boss was a well recognized part of the political machinery.

The Civil War had a great influence upon the nature of the Union and the character of the

government. Without altering the outward form, it nevertheless produced a great change in the relation of the states to the nation. It settled definitively that the Union was greater than any state and by the Fourteenth Amendment greatly increased the power of the Federal government at the expense of the states. It likewise produced a condition which resulted in the supremacy of a single party for a generation. Its war record alone would have made the Republican party invincible at the polls but the subservient negro vote rendered it doubly so. The result upon the party system was bad. Men belonged to one party or to the other because it had or had not supported the War and not because of the principles and measures which it advocated. The long continued supremacy of one party led to a sense of security and ownership of office far beyond anything which Jackson had encountered.

CHAPTER V

DEVELOPMENT OF PARTIES AND PARTY MACHINERY

In the United States the fundamental principle of government has been representation. There has been no thought of a direct democracy in which the people should meet together but government has been carried on through representatives chosen from districts. In the New England town meeting, to be sure, the people had a direct voice in government and a vote of the people came to be necessary for the adoption of constitutions and constitutional amendments. To this referendum in making and amending constitutions has been added in a few of the states a referendum and an initiative both of constitutional amendments and of ordinary laws. These expressions of the popular opinion in matters of government are, however, exceptional and it still remains true that almost the sole act by which the individual participates in the function of government is that

of the ballot; he votes for a particular individual for a legislative, executive, or judicial office and the representative chosen gives expression to the will of the state through acts of government.

Some method of determining the persons to be voted for has always been necessary. In colonial days the English practice by which candidates presented themselves to the voters without any nomination was followed; this plan was practical because the districts were small and the right of suffrage very limited; with the increase of population, the extension of the suffrage and consequent increase in the number of voters, and the enlargement of the number of elective offices, some method of nominating candidates for office became necessary. It was realized that the theoretical question of popular rule resolved itself into the practical one of securing the concentration of the votes of all like thinking men upon the same individual. To accomplish this an organization of the voters into parties was the first step and the second was to secure within the party some machinery for determining the individual upon whom the members should concentrate their votes.

The earliest nominating machinery was the

caucus, an institution developed in Massachusetts out of the meeting of a few individuals who were interested in securing the election of certain men to the local offices; the meetings were at first informal and without any sort of rules or regulations but in them was the germ of the modern highly developed nominating system.

As early as the year 1790 a plan for nominating state officers by the members of the legislature was tried in Rhode Island and its success led to its rapid adoption generally throughout the United States. In the method provided in the Constitution for the election of the President, it was the theory that the electors would exercise a free choice and select that man in all the country whom they regarded as best fitted to fill the high office. By a system of election by electors it was thought that a refining and purifying process had been introduced which would result in a selection far superior to one made by the common mass of the people. Choice by the electors was easy so long as Washington was available but as soon as he passed from the political stage it became apparent that there was no one person who commanded the support of all parties. Indiscriminate voting in the electoral college might

lead to no choice and a consequent throwing of the election into the House of Representatives. To prevent this an agreement beforehand of those of like mind became necessary and in consequence some method of reaching an agreement. In order that there might be a candidate who should appear as the choice of the party, the members of Congress of the respective parties gathered in an informal and unauthorized meeting and chose a candidate. Thereby the theory of a free choice on the part of the electors was abandoned and from that time till now they have regarded themselves as bound to vote for the party nominee, however he may be nominated.

The legislative caucus was a self-constituted body, having no authority from the people or the party. Its nominations were accepted at first because it solved a difficulty and they were acquiesced in for long because there was no other method at hand that was preferable. It was the most representative body in existence, yet it was by the very nature of its composition rendered incapable of representing all parts of the country. By this method of nominating candidates the members of the party in a minority in a legislative district had no voice in the naming of the

party's candidate. To remedy this defect so called "mix caucuses" were introduced, composed of the legislative representatives of a party and of men specially selected in those districts in which the party had no representative in the legislative body. The lack of a true representative character, combined with the growing consciousness of its unauthorized character, led eventually to its abandonment.

In the so-called era of good feeling which succeeded upon the close of the War of 1812 there was but a single party and the struggle for the nomination for the presidency sank into a contest among the leaders and assumed the character of factional contests in which the Congressional caucus sank into an unenviable position as the center of intrigues and combinations among the supporters of the aspirants. Its selections were made with little regard to the popular wish and without the slightest control by the people, and this too, at a time when the demand for a wider degree of control of government by the people was constantly in evidence, for the spirit of democracy had found expression in a constant widening of the suffrage and an increase of elective offices.

The Congressional caucus continued to perform its function until 1824; after Jackson was defeated for the presidency in that year and the party of the "Jackson men" was formed to vindicate the "Hero of New Orleans" and the rights of the people, the Congressional caucus was abandoned as an undemocratic institution; its support had been diminishing and it disappeared altogether in the face of the jealousy of the people of any agency which seemed to take power away from them and which did not draw its authority from them. It was obvious that the authority of the caucus was self-assumed and this fact was sufficient to condemn it in the eyes of the masses. With the abandonment of the Congressional caucus, the legislative caucus in the states also disappeared and some new method of nominating candidates became imperative. At first a variety of unauthorized and self-constituted nominating bodies sprang up but they all lacked the virtues and suffered from the vices of the old legislative caucus; in addition there was no certainty of fixing the choice of a party upon a single individual. They did well enough for the nomination of a popular figure such as Jackson, but some more systematic means for gathering the

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opinion of the party voters was necessary. It was discovered in the nominating convention.

Conventions had been in use from the beginning of our national life for the purpose of framing, adopting, and amending constitutions. The original theory of conventions was that of a body specially chosen in which was to be found the ultimate source of popular authority. In the action of the Constitutional Convention at Philadelphia in the method it provided for the adoption of the Constitution there was a clear illustration of this idea. The Convention had been summoned under a resolution of the Congress "for the sole and express purpose of amending the Articles of Confederation," yet its first important step was a determination not to attempt to amend the Articles but to frame a new kind of government. Such action was revolutionary and could be justified only by the approval of the people. To secure this approval, and thereby remove the illegality of their proceeding, the Convention adopted a resolution recommending that the Constitution should be submitted to conventions specially chosen in each state for the purpose of accepting or rejecting it. An approval by a majority vote of all the people within the Union

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was unthought of and even approval by a majority vote within each state found no advocates, so far were the "Fathers" removed from the notion of a direct democracy.

It was to this conception of a convention that the people turned in seeking for a popular means of nominating candidates. A nominating convention composed of delegates chosen for the sole purpose of making the nomination would represent the popular will directly, and so it was heralded as an institution for restoring the control of party affairs and of the government to the hands of the people. Nothing seemed simpler than that by electing the delegates the people would control the nominations, for it was still the era when election was regarded as the principle by which the popular will could be made effective.

So from top to bottom of the party structure conventions were introduced. At the top, as the culmination of all, was the national convention for the nomination of candidates for President and Vice-President; at the bottom, the caucus or primary remained as the smallest local unit. In between, county and district and state conventions were developed for the nomination of candidates for local and state offices and for Congress.

Paralleling the conventions there grew up a system of committees, local, state and national, constituting the executive machinery of the party, which in time acquired great influence. This committee system was due to the necessity of maintaining the highly complex organization of the party, which had resulted from the practical application of the democratic spirit in the extension of the suffrage, the great increase in the number of elective offices and the frequency of elections, and in the principles of rotation in office and to the victor belongs the spoils.

With the development of a complicated party machinery, there grew up necessarily many rules for the guidance and direction of the parties in the selection of delegates to the conventions, in the conduct of the conventions themselves, in the choice of committeemen and in the determination of their functions.) Most important of them all, however, were the rules determining who were eligible to vote for the delegates or to participate in the caucus or primary for the nomination of candidates for the local offices and for the election of delegates to the first convention in the series. The importance of controlling the smallest party units was evident, since they were the starting

point for all the conventions and committees higher up. By dominating them, the control of the higher organizations was practically assured, and there was no other way of effecting this than by controlling those who participated in them. In the first place, a vigorous effort was made to exclude all those who belonged to a different party. The next object was to exclude all those whose party allegiance was not strong and who would, therefore, readily vote for the candidate of another party if they regarded that candidate as better fitted. Such members were not easily disciplined and the success of party was seen to lie in the strength of its organization. What has just been said refers to the average or normal local unit in the towns and villages and in the country; in the cities, the control of the caucus was even more absolute in the hands of the bosses. Men of independent spirit, even if they passed the tests of party regularity and secured admission, were at a great disadvantage against the organization and the voters it controlled.

Up to the time of the Civil War the party system in general had served the useful purpose of forming a cohesive force outside of government and yet working toward harmonious action.

in the various branches. It had succeeded in modifying, in large measure, the theory of the separation of the powers of government which had been regarded as so fundamental by the makers of our constitutions. Up to that time, too, the nominating conventions for the most part reflected the popular will and party organization had not become tyrannical.

The introduction of the nominating convention was, however, an anomaly and in contradiction to the spirit of direct rule by the majority which was making such rapid headway. The convention was never a true institution of democracy and it is a little curious that it should ever have been regarded as the surest and best means for gathering the will of the people, especially since by the time nominating conventions were introduced, constitutions and constitutional amendments were being submitted to a direct vote of the people. It was one of those interesting cases in history when the inventive genius of mankind fails and an old institution is seized upon and used for a new purpose because of an old idea which underlay it.

The convention, once introduced, held its own in the face of democratic development because of

its efficiency and ease of management, and eventually because of the control which it assured to the party bosses. In time, the chief business of a party came to be the securing of the nomination of some particular individual or individuals and the selection of the nominees was made by a single individual or by a small group of individuals, known as the party bosses. The rank and file of the party had no real part or share in the choice and as similar conditions prevailed in both the large parties, the individual voter could do no more than choose between the candidates thus presented. The popular will, in so far as there was one, could express itself only in making choice between two candidates. The majority might decide the election but the majority had nothing to do with choosing the candidates. The convention, which had been introduced as a democratic institution for the express purpose of restoring power to the people, had now become the least democratic of institutions, and after a successful career of nearly three-quarters of a century, it seems threatened by the direct primary, proclaimed in its turn, a true institution of democracy for securing the control of nominations in the parties by a majority vote. ✓

The direct primary is only the newest of many efforts at reform in the interest of a real choice by the majority. Preceding it were numerous attempts to abolish the evils which had grown up in political life and which in some strange fashion seemed to take the power out of the hands of the people and place it in the hands of the few. While these reforms were valuable, they did not get to the root of the trouble and consequently did not produce the desired change in political life. The real control of the government remained in the hands of a few who did not hesitate in many instances to use corrupt methods for maintaining their control.

At first the control of government was sought largely for the sake of the salaries attached to the offices but in the end the realization of the great financial profit which could be gained through the control of government produced "the combination of big business which desired privilege and of bad business which desired protection," and out of the combination there resulted the strongly intrenched political machine in many cities and in some states.

It very soon became evident that those who controlled the government could realize certain

indirect financial profits; there were offices to be filled by the appointment of relatives, or there were contracts to be let to other relatives or to companies in which the officials had financial interests; these, with many others of a like sort, constituted the sources of so-called "honest graft," or money, which could be legitimately made through the control of the various departments of governmental activity. It was very easy to pass over to the position that those in control of government and therefore in control of the disposition of these favors should be paid by the one to whom they were dispensed; when this happened, "dishonest graft" had made its appearance; in time the protection of vice and crime on the one hand and the granting of special privileges on the other were added as sources of financial profit to those in control of government, whether office holders or party bosses.

The final stage in the development of the control of government for private gain was in the alliance of the political boss, whose reward had lain in the sense of power which he enjoyed or in the graft which he could secure, with the leaders of business whose interests it was thought necessary to protect from hostile or to advance by

favorable legislation. The political boss controlled the choice of candidates and big business made the boss subservient through its campaign contributions and slush funds. Business was non-partisan and contributed to both parties as it served its interest.

To meet the growing control of government for private gain and to curb the power of the boss, efforts have been made to purify elections through greater state supervision upon the theory that thereby the popular will might find a correct expression. The general course of affairs has been toward the assumption by the state of control of all matters pertaining to elections. Originally all that the state undertook was the regulation of the time and place of holding the elections and the counting of the ballots. The preparation of the ballots and their distribution were formerly left to the candidates, but now the ballots are provided by the state. Ballots are official and uniform and a number of laws have been passed seeking to make the use of them an intellectual and not a purely mechanical exercise. Instead of receiving from a party worker a ballot already properly marked which he had only to deposit in a box, the voter must now enter the

booth alone and mark his own ballot. But despite all attempts in this direction, party workers are still able to direct the casting of many votes through the preparation of sample ballots, in the marking of which the voters are trained.

Another attempt in the direction of reform was in the registration laws by which it was hoped much of the illegal voting by repeaters, particularly in cities, would be done away with. Registration has become practically universal and more recently has been made the basis of the party primaries. But election and registration laws of every description and variety were of small effect in making the will of the people supreme. Popular sovereignty was all right in theory but when the attempt was made to put it into practical operation there were unexpected difficulties. Laws directed to that end did not have the desired result. Always in the last analysis the determining voice was seen to lie with one person or with a few individuals. But not despairing, the attack of the reforming forces was directed toward a new quarter. Men now declared that the trouble lay in the parties! Granted that parties are a necessity, they must nevertheless be organized upon a democratic

basis; hitherto they have been aristocratic or oligarchical, and so the reform of the party organization was made the goal in Democracy's name.

There had grown up in a number of the Southern states in which one party was in such a large majority that nomination was equivalent to election, a system of primary elections at which the rival candidates for the nomination appealed to the voters of the party. The candidates as a rule pledged themselves to abide by the result of the primary and to support the successful candidate in the regular election. The success of this system in choosing local officers led to its adoption for the choice of state officers and of those Federal officers elected within a state. This system of primary elections was taken up by the advocates of party reform and its adoption urged for all parties in all the states.

The growth of parties and party organization was slow; for a long time they were almost without rules for their own guidance, and even when they began to adopt measures for themselves, there was no thought of bringing them under the control of the state. They were extra-legal and it was not until the direct primary as a method

of nomination began to claim adherents that proposals were made to bring the parties under the control of law. It is true that whenever the state undertook to do what the candidates had previously done, it was in reality extending its control over the parties, as in the matter of registration and furnishing ballots at public expense, but it was only with the introduction of the direct primary elections that party management fell under legal control; as yet this control is limited to the individual states though a proposal for "presidential primaries" has been advanced. Under the old system of committees and conventions, the parties themselves determined who should be eligible, how the members should be chosen and what duties and functions they should perform. Under a system of direct primaries the law provides who shall compose the electorate of each party through the registration, and how and where and when the party election for the choice of candidates shall be held. Generally the same laws regulate the primary election as the final election; the one is in every sense a state affair as much as is the other.

The evident purpose of a direct primary is to make the choice of candidates dependent upon

the will of the numerical majority. The convention was introduced because the caucus had deprived the people of their freedom of choice and in course of time the convention became a cunningly devised instrument for securing a choice of candidates whose nomination was dictated by the bosses of "the machine."

The most encouraging fact disclosed by a study of American democracy is the presence of a spirit which in spite of repeated defeats renews the battle for majority rule, for the practical control of the government by the people. The most discouraging fact revealed by that same study is the successive failure of each new institution or arrangement to accomplish the result. At first they seem filled with a golden promise but little by little they pass under the control of a few individuals. The minority rules in reality and after a time the majority comes to realize that it has been dispossessed and makes another attempt to assert its supremacy and gain the mastery.

It sometimes seems as though Democracy in the United States had made no real progress in its efforts to control government but had only moved in a vicious circle. Starting with a rebel-

lion against the rule of a king, it progressed to a republican form of government and thus far there was real gain; but thereafter it has been a succession of reform movements, each having an individual phase but each aiming at the overthrow of a small group which had succeeded in getting control of government. Demand for popular rule is followed by some new governmental arrangement intended to afford it; the new institution in time is perverted and is followed by a new demand for popular rule and a new governmental institution which in turn is overtaken by the same fate; and so it goes on in a never ending round. The pessimism of this view would be unqualified were it not for the successive efforts at accomplishing the result desired. It may be that our viewpoint needs correction and instead of looking for some means for the final solution of the difficulty, we should see in the constant struggle the real nature of Democracy.

Such a view of American Democracy as we have just expressed must be modified by the consideration that the changes thus far made have not been in the structure and form of government so much as in the means of giving expression to the popular will through existing agencies. The

general plan and system of the American government is fundamentally the same to-day as when it was first established. The dual arrangement of states and nation has been maintained at all costs, and within each there is still the threefold separation of the departments of government, the dual legislative chambers, the single executive and a more or less independent judiciary. The changes that have been made are in city government and in the initiative, the referendum, and the direct election of senators; they are calculated to produce radical changes in methods of legislation and character of legislators, though leaving intact the old framework.

9 The changes have been outside the framework of government. Almost immediately after the adoption of the Constitution and the successful launching of the government, there began to grow up a spirit of veneration for the Constitution and the republican form of government that had been established. Much of the prosperity of the country was attributed to the republican institutions; there was a great pride in the fact of having established the first republic with an extensive territory and the first Federal government the world had ever known. The insti-

tutions which our forefathers had created came to be regarded as almost sacred and the Constitution as a well nigh perfect thing. If anything were amiss, it was not because of the form of government under which we lived.

Jefferson gathered together a party on a platform of local self-government, frequent elections and the equality of men. A rapid extension of the suffrage, a steady increase in the number and frequency of elections and the organization of party were the means by which he sought to realize the popular will. In Jackson's day the principle of equality was pushed still further and rotation in office and the spoils system were introduced into the national life. At the same time there was a bitter antagonism between the new radical spirit of the West and the conservative propertied classes of the settled East. The Civil War assured the supremacy of the nation over the states, the majority over the minority, and the abolition of slavery resulted in universal manhood suffrage. Following the Civil War came a period of absorption in the development of the material resources of the country in the course of which men neglected government and were content so long as those in control of both

parties and of government were not too outrageous in their villany and they themselves were not disturbed in their money getting. In time conscience awakened. The reforms advocated, however, were not directed toward a change in the form of government—that was still sacred—but in the conduct of elections, the control of the party machinery and such matters, which were regarded as inimical to democracy and to the supremacy of the popular will. It did not occur to any but a few students of the science of government to look for the difficulty in the form of our government. It was only by slow degrees that the contradiction became apparent to a wider circle which realized that our government had been expressly constituted to prevent the direct and immediate expression of the will of the majority.

CHAPTER VI

SOME NEWER FORMS OF POPULAR GOVERNMENT

The realization that our form of government had been constructed to delay, if not to thwart, the popular will has come as the result of many unsuccessful attempts to make the will of the people count directly in the control of government. The principle of election had failed; universal manhood suffrage had not accomplished it; ballot reforms had not done it; election laws had proved futile. Representatives were elected to the legislature but when elected they were not responsive to the popular will—they did not carry out the wishes of the people but the wishes of a small group of individuals who were outside of the government, often even outside of party, who yet controlled both.

One of the earliest indications of popular dissatisfaction with the government was the distrust of the legislatures. Mr. Bryce remarked upon this fact some thirty years ago when he was seek-

ing an explanation of the great change in the size and content of the state constitutions. The earlier constitutions were remarkably brief documents, containing only the framework of government. Each department of the government was provided for and the method of its choice, the terms of office of the persons to be chosen, their qualifications and powers were set down. This, with a statement of the general limitations imposed upon government and a provision for amendment completed the usual contents.

When the distrust of legislatures grew acute, the old reverence for constitutions and the old faith in a republican form of government were still vigorous so the natural remedy seemed to lie in the simple procedure of enlarging the constitution so as to include in it the subjects which it was desired should be removed from the sphere of ordinary legislation. California led the way with the constitution of 1879 which greatly surpassed in length any previous constitution. This example was quickly followed by other states and a process of enlargement by revision and amendment set in, which has resulted in inserting in our constitutions a great mass of enactments which should properly be dealt with by statutes.

The phenomenon can be accounted for in no other way than as due to a distrust on the part of the people of their representatives. The Democracy was seeking to assure its supremacy and holding to the old theories of the excellence of our institutions, it sought this method of overcoming a very real failure which it had experienced. The view which was at the bottom of the original constitution making was to gain security for the liberty of the individual by weakening the power of government. On the assumption that government was an evil, it was sought to make it as little harmful as possible by giving it the least possible to do. So during this period the feeling with respect to the legislatures seems to have been to render them harmless by limiting the subjects upon which they could legislate. In order to limit further the power of the legislatures to do harm, many constitutions contained provisions expressly limiting the frequency and the length of legislative sessions.

These attempts to secure by indirection, as it were, the supremacy of the popular will were highly illogical and were the product of two factors: the old theory that liberty lay in inaction and the new condition of boss rule of the legisla-

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tures. They were the result of a failure to perceive where the real difficulty lay. This limitation of government through restrictions placed upon the legislatures was reactionary in character and could not in the long run endure. No institution which is out of harmony with the spirit of the times and of the people can remain unchanged under a form of government which is popular in character. Beyond doubt the spirit of the American people has been steadily tending away from the theory of a government, limited that it may not do harm, toward that of a government endowed with all powers necessary for the advancement of the social well-being of the state or nation; away from the conception of government as something evil in its nature and prone to oppression and toward the conception of government as an agent of the popular will for the accomplishment of social good. Government is not feared as master but is looked to as a faithful servitor. The sphere of government is being enlarged that it may the better serve its master, the people.

There are many who view the increase in governmental activity with alarm, seeing in this phase of our political life the most serious menace to

individual liberty. These people are holding to a discarded view of life and of the development of political institutions. They are under the influence of a system of thought which was productive of much of modern liberalism in present day government, but this system has experienced the common fate, for having achieved its goal, it has ceased to have an objective and so has become conservative. The theory of the law of nature and natural rights furnished a splendid vantage ground for the fight against absolute power in the monarchy; it was the source of radical and revolutionary ideas in an age of kings, but it lost its power when popular governments were introduced.

Let us see a little nearer how this came about and its particular relation to our own democracy. Under the influence of the theory of natural rights a basis had been found for the theoretical limits to autocratic power. As this theory was worked out by John Locke and accepted by the founders of our republic, there were certain rights which men enjoyed in a state of nature before civil society came into existence; a part of these they surrendered by the terms of the social contract by which society and government were

established, but a part of the natural rights could not be surrendered and these formed the barriers over which absolute power could not vault. Carrying out this conception, our constitutions contain Bills of Rights which are regarded as the fundamental limitations upon the powers of government. But Bills of Rights are sadly out of harmony with a spirit which demands the rule of the will of the majority; they are a species of limitation whose *raison d'être* is gone. They were introduced into our political institutions under the influence of the monarchical tradition when it had become a matter of course to regard government with a hostile eye and to seek to put restraints upon it. The fact that the new government was founded upon popular sovereignty was not sufficient to modify the inherited conception and so the people, as the source of all power, set about placing limits to their own authority.

The presence of Bills of Rights in our constitutions became traditional but the theory which gave rise to them has been discarded. The law of nature and natural rights are no longer seriously regarded in the world of political thought. The only laws which today receive consideration are the laws of the land and the only rights are those

which are assured by the law of the land. The power of the state over against the individual has no longer to confront a barrier raised up by the natural and inherent rights of man. The present generation sees no theoretical limits set to the things the state may do, except such as are set by the nature and object of the state and the means which it may use to accomplish them, but not by the natural rights of the individual. The fear entertained by many that individual liberty is endangered by an increase in state activity becomes meaningless when we adapt our conception of liberty to the new view. If liberty is freedom from restraint, then every law is a restriction of liberty, and this is generally the view that has been held by all those who have sought to restrain the action of government. But liberty is not freedom from law but the ability to live in accordance with a known law, common to all. The law is the source of rights and at the same time of liberty. It assures us of a field in which to display our activities and so long as the law increases this field, liberty is not being restrained but enlarged. So it is that restrictions upon the legislatures of the character we have been discussing must be regarded as out of harmony with

the present political philosophy and therefore not destined to endure.

The people in time grew tired of seeking to accomplish what they wished through the negative method of putting restraints upon the legislatures and turned to positive measures calculated to insure the supremacy of their will. For the first time since the Federal government was established—with the one great exception of the Civil War—an attempt was made to change the form of the government. At last the reverence for a representative republican form of government was not strong enough to stay the attack. The remedy for the evil conditions by which the will of the people was thwarted had been sought in many a by-path—now the open road of change in the structure of government was entered upon and it is not clear where the journey will end. The old has not been destroyed save in municipal government, but new agencies for the expression of the popular will have been created—some co-ordinate with, some superior to the old ones. These new institutions of democracy are the commission form of government in municipalities, the initiative, the referendum, and the recall.

The commission form of government in cities is the most radical departure from the traditional type of governmental arrangement which we have experienced, and it is something without analogy and precedent in our own history. The typical form of municipal government was long the same as that of the states and the nation: a form in which there was a single executive, a bicameral legislative body and a judiciary. In course of time the existence of two houses in the legislative body of a city was seen to have no logical foundation and under the belief that it served no useful purpose, one was abolished.

The governments of our large cities rapidly became the most corrupt part of the political organization. In them the boss of the worst type thrived and the political machinery was supported by the protection it could afford to vice and crime as well as to special business interests. Conditions were as shocking as can well be imagined and government rested no more upon the real will of the numerical majority than in autocratic Russia. The government of our cities was controlled by the "machine," or by the "ring," or by the "boss," as the case might be but not by the popular will. The supremacy of these minority interests was

due to many causes and it is a mistake to attempt to explain it by reference to a single cause; but undoubtedly the wide extension of the suffrage and the complicated machinery, both of the government and of party organization, contributed largely to the result. We are not primarily interested in municipal government for its own sake and therefore we need not pause to investigate the causes for the corrupt political conditions which grew up nor to consider the many attempts that were made to better them, for we are looking to see the forces and counterforces at work to advance and retard the development of the rule of the majority; so we fasten our attention only upon a small portion of the whole field of municipal reform.

The problem of city government in time became so grave as to warrant the view that democracy had failed—and that, too, in the field of local government, the field in which it had always been thought that its success would be easiest.

Though in many cities the council, or legislative body, was composed of a single chamber, yet there were so many departments and commissions and authority had been so completely parceled out among them, that it was well-nigh impossible

to fix responsibility upon any one for failure or wrong doing. Frequently the part played by the executive or the legislative could not easily be discerned and the mass of the people did not know upon whom to place the blame when things went wrong. There was no responsible authority anywhere in city government; the real authority was outside the government and officials, instead of feeling responsible to the people, felt beholden to the political boss through whom preferment had come and to whom they must look for future rewards. There was no concentration of power but, under the old theory of the separation of governmental functions, it had been widely distributed so that no one person should be too strong. The inevitable consequence had been that the people could not watch all their servants all the time; had they attempted to do so they would have had little time to devote to their ordinary pursuits. Under such conditions it was not surprising that professional politicians appeared to whom it was worth while from a financial standpoint to devote all their time to the business of nominating candidates, conducting elections, determining appointments and to all the other things necessary for the successful manning of the government.

Under the existing form of city government there was no opportunity for any one within the government to assume a position of leadership. There was little honor or distinction attached to municipal service because there was no chance for the display of talents of a high order, so men sought office for the financial rewards alone. The natural consequence was the development of leadership outside of government and within the party. By this means the boss of the successful party was the boss of the city and the profession of boss was highly remunerative.

Against such conditions as existed and in a measure still exist in our cities, there was constant rebellion but with little success until the introduction, under the pressure of a great calamity, of the commission system. The new idea involved was that of the centralization of power, both executive and legislative, in a single small group of elected officials,—the commission. The plan involved the entire repudiation of the theory that liberty was possible only where authority was divided—a theory which had been part and parcel of our political thought and institutions since the establishment of the government. The new system rested upon the theory that power and re-

responsibility are co-ordinate in government and that the only way of securing responsibility is to locate it in definite persons by giving them the power. Jefferson thought that the way to secure responsibility was by frequent elections and that so long as they were retained, liberty would be safe. Where annual elections cease, there tyranny begins! We know from experience that frequency of elections has not brought a sense of responsibility to the people on the part of those elected and that a separation of the powers of government is sure to produce weakness but not necessarily, nor consequently, good government.

The commission form of municipal government spread rapidly and has been adopted by hundreds of cities all over the Union. As yet, however, it has not been adopted by any large city nor has it won its way to a general acceptance. Its opponents still decry it as undemocratic and aristocratical—even oligarchical—placing, as it does, the entire management and direction of the affairs of the municipality in the hands of the commission.

It is contended, moreover, that so soon as the first fervor is over, old conditions will return but with an added opportunity to the bosses who will

find it easier to control the nomination and election of the few commissioners than of an executive and a numerous council, and that a commission controlled by a boss will place the city absolutely in his hands.

* Such an objection raises a fundamental question which must be squarely met. The form of government will not of itself produce good or bad government for the character of government depends upon the character of the people who control it. The form of government may, however, contribute to the ease with which the majority or a few shall be able to control and democracy cannot expect more of the form of government than that it shall make easy the supremacy of the will of the majority. It is undeniable that it is easier for the people to watch half a dozen men in whom is concentrated all authority and upon whom rests all responsibility than to watch many men among whom authority and responsibility are divided. Therefore we may regard the adoption of the commission form of government as a distinct step toward the possibility of real majority rule.

The initiative and the referendum have been advocated and introduced in order to render the

popular will more effective. They are a product of the distrust of the legislatures and the feeling that the only way of securing the will of the people was to supply a means for its immediate and direct expression. Representatives had not represented the people but the individuals and organizations and business interests which had secured their nomination and financed their campaign, until some direct method of legislation seemed to be imperatively demanded or else democracy was a failure. The place of the initiative and the referendum in the general theory of government was not the force which led to their adoption. They have been introduced as emergency measures, to meet a particular situation and with the expectation that they would not be the normal and usual processes for legislation, but would be reserved for the special occasions, should they arise, when the legislatures failed to carry out the wishes of the people. The belief was general that the possibility of using them would render their use unnecessary, but the course of events wherever they have been adopted seems to show a tendency to depart from the early conception of an exceptional agency and to regard them as normal and usual methods of

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government. The people feel, or are induced to believe, that the way to secure the necessary and proper legislation is to make it themselves through these instrumentalities. The legislatures have not been abolished, to be sure, but have been left undisturbed in the possession of all their powers and functions, only with the initiative and the referendum as concurrent and competing legislative organs.

The introduction of the initiative and referendum is almost as great a departure from our previous theory of government as is the commission form of government for cities. The separation of the powers of government carried with it the theory of a system of checks and balances by which the executive would serve as a check upon the legislative, the legislative upon the executive, and the judiciary upon both; moreover the two branches of the legislature should serve as checks upon each other and for this purpose they were given terms of different lengths and were chosen from different territorial areas. In the last analysis the people could use the power residing in them to check the whole government should it be necessary by an amendment to the Constitution. But the process of amendment was made

quite difficult in order that changes should not be frequent. In fact, in some of the state constitutions amendment could take place only at stated intervals. The real reliance for the supremacy of the will of the people was placed in the system of checks and balances, and in the elective principle. Experience under the conditions of frequent elections of numerous officials has shown the difficulty, if not the impossibility, of popular control of the nomination or election. These fall into the hands of the professional politician and officials are consequently responsible to them. In addition the carefully elaborated system of checks and balances has, by its complexity, rendered easier the control of government by private interests for it has increased the difficulty of locating responsibility.

The referendum is to be regarded as an additional check upon the action of government, since it puts into the hands of the people a quick and easy method of checking a legislature that seeks to disregard the will of the people, while the initiative goes a step beyond this in that through it the people may take the lead and entirely dispense with any action on the part of the legislature. It is in reality the removal of a check upon

the action of the majority. The whole system of American governments was cleverly devised to protect the minority by making it extremely difficult for the majority to control all the branches of government at the same time. The fact that power was allotted among the different departments; that there were different methods of selecting the officials and that they served different terms will sufficiently illustrate the opportunities for the minority to block the majority. The initiative has swept away most of the defenses which had been erected in behalf of the minority and has exposed it to the direct attack of the majority. Time after time the people sought to make their will effective by some reform and each time the result was disappointing, but none of these reforms touched the framework of government. In the initiative and the referendum violent hands are laid upon the old theory and a new principle is introduced—the principle that the rule of the majority should be made easy, not difficult. To this extent the fundamentally illogical theory of a government by the people in which it was extremely difficult for the people to govern, has been removed.

It has, however, by no means been conclusively

demonstrated that the introduction of the new method and principle will accomplish the results desired. It may suffer the same fate which has overtaken previous efforts to translate the will of the people into effective action and become the instrument of the forces which seek to control government in the interest of their private fortunes. Already there are those who think they see the change taking place; they point to the fact that with the double system of elections necessitated by the direct primary and with the added elections entailed by the frequent use of the recall, the average citizen has grown or will grow weary of so much voting and that it is becoming more difficult "to get out the vote"; in short popular enthusiasm is slackening and when this happens, then comes the opportunity for the man whose personal fortunes and selfish interests make it worth while for him to maintain his interest. Aristotle, speaking in criticism of Plato's view that if there were community of wives and of goods all men would have an equal love for all children and the public good, declared that that which was common to all was least regarded by each, and this view is correct now as then. What is a matter of the public good never holds

the same compelling interest as that which is matter of private profit—and so it is that the man whose selfish interests can be served through a control of the government will ever be ready to take advantage of any lack of watchfulness on the part of the people.

In addition to the effect which has just been considered, the initiative and the referendum are putting upon the electorate an impossible task in that the number of measures to be considered at each election is so great and their character so complex that it is impossible for the voter to have an intelligent opinion regarding them. The number of measures to be voted for is having a history which parallels that of the elective officials. Originally few in number, they have increased to such an extent, due to the increase in population and the extension of the elective principle, that it is now a practical impossibility for the voter to have personal knowledge of the candidates. For this knowledge, he has been compelled to substitute party loyalty and vote for the mass of candidates nominated by his party. At the primary, his condition is little better. So it is rapidly becoming with respect to the measures on the ballot. The remedy which has been

proposed for the former is the short ballot but as to the latter there is as yet no suggestion of an adequate remedy.

The last of the newer institutions for the better expression of the will of the people is the recall. Until a comparatively recent time the American system of government might very properly have been said to run by the clock. Public officials were chosen at stated intervals and only death or resignation brought an earlier termination of their careers than the end of the term for which they were chosen. Impeachment existed but it could no longer be considered a political measure; its sole purpose was to remove those from office who were legally unfit.

With the disappearance of impeachment as a method of removing public officials because of the political policy which they pursued, we were left without any means of getting rid of an elected official who did not carry out the wishes of his constituents. There was nothing to do but wait till the next election period came round and even then it was very difficult to make responsibility effective. The recall is intended to make it possible to exercise control over an elective official at any time during his term of office.

The theory back of it is the supremacy of the will of the people at each and every moment. Instead of a representative looking forward to the termination of the period for which he was elected as the day of reckoning, he must feel that it is in the power of the majority to hold him responsible at any time for any of his acts. It is another departure from the old theory of a representative government in which the representatives should enjoy a fixity of tenure which should make them independent of the passing fancies of the people.

We must remember that the Federal Constitution was framed by men who felt a lively distrust of too much democracy. They wanted a representative government in which the representatives should not be merely reflectors of the prevalent feelings of their constituents but should be sufficiently removed from the popular passions to enable them to have independent opinions of their own in opposition to those of the people. This distrust of democracy has disappeared naturally enough with the triumph of the popular will and its consciousness of its own power. The difference in attitude may be expressed perhaps by saying that the "Fathers"

were legislating for the people while now the people are legislating for themselves. They do not distrust themselves and therefore they do not wish their representatives to be so far removed from a sense of responsibility that they cannot be reached till next election. They have wished to make it possible to have the next election come whenever it seems that a representative is not representing his constituents. Undoubtedly the immediate cause for the introduction of the recall was the fact that representatives had lost the sense of responsibility to the people and were obedient to the political bosses.

The recall has been very widely introduced in connection with the commission form of government for cities, and in a few instances it has been made state-wide and applicable to all elected officials, except to the Federal representatives. The theory of the recall, in so far as it applies to legislative representatives, intensifies the theory that a representative is peculiarly such of the particular district by which he is selected and not of the whole of which the district is a part. It has always been the theory of the British Parliament that it incorporated in itself the British people and a member of Parliament, though chosen by a

district, represents the whole people. In the United States the theory has been reversed and a member of the Senate represents the state, a member of the House of Representatives and the members of the state legislature represent the particular districts by which they are elected. Only the President represents the people of the United States, and, to a somewhat less degree, the governors represent the people of the states.

There remains still to mention the popular election of United States Senators as the most recent change in the structure of our governmental system looking toward the supremacy of the people. This change is no less striking in significance than the introduction of the initiative, the referendum and the recall and scarcely less important in its results. Its consequence for the movement we have been following is to be found in the fact that it touches the structure of the Federal government while the others have been limited to some of the states and some cities. Not even the Federal Constitution is too sacred for change at the hands of a majority bent on making its will easily felt in the control of government. Convinced that the privileged few have sought to control government for their own

selfish purposes, the many are seeking to make easy the election of officials and the control of government in the interest of the masses. It is too early to foresee the effect of this change upon the character of the Senate but it is safe to predict that henceforth Senators will be more responsive to popular sentiment.

CHAPTER VII

THE SIMPLIFICATION OF GOVERNMENT

Democracy in the United States has come to mean the supremacy of the will of the numerical majority. From the beginning our governmental institutions have rested upon the foundation of popular sovereignty and the will of the people has been in the last analysis the ultimate power. Yet the history of our political struggles shows two particulars in which we have departed from the conceptions of the "Fathers" and the ideas underlying the structure of our government as set forth in the Constitution. In the framing of the early constitutions and notably in the Federal Constitution, there was present as a guiding principle, a fear and distrust of all governments, whatever their character might be, and a particular distrust of the mass of the people; consequently constitutions were framed for the purpose of restricting the action of government so that it could not do harm and likewise to prevent the

popular will from finding immediate realization through the action of government. Fear of government was combined with the view that the less government there was, the greater was the freedom of the individual.

The result was a system of governments of strictly limited and delegated powers and so carefully balanced, part against part, and power against power, that years might be required for even an overwhelming numerical majority to make its will effective. The governments established were representative republics in which the minority found the amplest protection and property a very large representation. Today, the rule of the numerical majority is accepted in theory and in practice the circle of voters is an ever widening one.

There is no fear of government nor is the democracy desirous of limiting the sphere of governmental action. On the contrary, the people are constantly demanding that government shall perform ever greater services in behalf of the popular well-being. The growth in the complexity of civilization and the problems of society have forced upon government a greater field of action. Into this field the people are not

afraid to have government enter if it truly represents the popular will. The quarrel with government has been that it did not represent and the majority of reform movements from Jefferson's election in 1800 until today have had for their object a truer and more direct representation of the will of the people. The movement, then, has been twofold; toward a larger sphere of action on the part of government and a truer representation of the popular will. More recently the effort to secure the supremacy of the will of the people has been away from truer representation and toward a more direct expression of the will of the people. New agencies of government have been introduced whose purpose has been to enable the numerical majority to give direct expression to its will and have that expression thereby realized in some concrete act of government.

The attempts which have been made to secure a truer representation of the popular will and to give a more immediate expression to the will of the majority have not always been successful. In fact a fatal lack of success seems to have pursued each one, so that they have succeeded each other in rapid succession. Some new devise

for restoring the government to the hands of the people is advocated and adopted; for a brief period it seems to accomplish its purpose, but eventually popular control of government is seen to be no nearer than before. The new devise has passed into the hands of a few or has produced a condition which makes more difficult the control of government by the many.

Such was the case with the principle of election advocated by Jefferson. Frequency of elections and an increase in the number of elected officials made the control of parties and of elections by the bosses an easy matter. Rotation in office and to the victor belongs the spoils, strengthened the hold of those who made a business of politics and lessened the possibility of control by the democratic majority whom Jackson sought to put in power. The nominating convention has become the tool of the interests and universal manhood suffrage only enlarged the scope of the bosses' activities and created the demand for closer organization with consequent loss of control to the masses and gain to the few who controlled the organization. The secret ballot, state control of elections and the direct primary have not eliminated corruption nor

destroyed the power of the organization. The initiative, the referendum and the recall are losing ground in the states where they have been adopted. The commission form of city government, combined with the recall and the short ballot, has done much to purify political conditions in several hundred towns and cities throughout the country, though its application to the very large cities has not yet been made.

With the exception of the commission form of government for cities, the reforms which have been undertaken have proceeded upon the assumption that the form of our government, its mechanical construction so to speak, was admirable and not in need of change. This has been due in part at least to the veneration of the constitution and the principles of government upon which it rested that began to grow up shortly after its adoption and that culminated in the Civil War. The trouble was thought to lie in some alien condition that prevented the people from expressing their will through our excellent governmental arrangements.

The problem which we as a people have been seeking to solve is to discover some method by which the will of the people can easily find ex-

pression in concrete acts of government; the demand for an increased activity on the part of the state compels us to seek at the same time for an efficient form of government. Gradually the conviction is gaining ground that the structure of our government is not conducive to the accomplishment of either of these ends.

The American system of government is above all a complex system. In the first place governmental powers have been divided between the state governments and the Federal government and within the states the principle of local self-government has led to the establishment of numerous subordinate political corporations for the performance of governmental functions. The principle of the separation of the three branches of government, the executive, the legislative and the judiciary has been fundamental in state and Federal governments and until very recently in large measure in municipal governments also. Each branch is so elected and given such powers as will enable it to check every other and in the legislature each house acts as a check upon the other. The powers of government are delegated and limited and the courts by declaring laws unconstitutional can check any tendency in the

other two departments of government to go beyond the bounds set by the constitution. This complexity was partly due to the exigencies of the case but more largely to the views held regarding the inherent character of government. The need for a government of all the states and a government for each state made a division of powers and a delineation of those powers essential, but the conception of government as having an inherent tendency toward tyranny and oppression led to the adoption of the principle of the separation of the powers of government and the theory of checks and balances in order that no one department might become supreme and 'pervert government. Naturally it was the executive branch which was most feared, both from the prevalence of the absolute monarchy in the eighteenth century and from the conduct of George III toward the colonies. This idea of limiting and checking the powers of government harmonizes very well with the desire that the popular will should not too readily find expression, lest it should prove as tyrannical as the monarch.

This complexity of structure in our system of government has always been regarded as part of

its merit and is still cherished by many as the most necessary as well as the most excellent principle of our government, yet the question is daily being more insistently pressed whether or not this complexity may not be responsible for the most of the trouble hitherto experienced in securing efficiency and majority rule. When the Union was formed and the complex system of government put into operation, the population of the whole country was not equal to that of New York state at the present time. Moreover life in all its phases was simple; transportation and communication were carried on as they had been for centuries previous; there were few manufactures and no large cities with their multitude of problems; socially, politically and economically the life of the individual and of the community was carried on in the simplest terms; consequently the business of governing was equally simple. There were no political parties, little foreign politics, and few domestic problems of moment beyond that of securing adequate revenue for the Federal government. Under such conditions the simplicity of life rendered the complexity of the governmental system less marked, and the early success of these republican forms of government

created the tradition that they were the best form of government. So soon, however, as the life of the country and the business of government began to grow complex, the new agency of party was developed outside of but alongside of government as a unifying force to overcome the lack of co-ordination in the various parts of government. Parties have served the useful purpose of unifying government but in time they have become so complex in their organization that the demand has arisen for their control by government.

If we were to approach the problem of government from the purely theoretical standpoint, we should be inclined to say that the simplest form of government was the most efficient, for the more complicated the arrangements, the greater the loss of energy, the lack of economy and the absence of responsibility. The simplicity of the monarchy has always been regarded as one of the principal causes of its success; concentration of power in a single individual makes decision easy and action quick. If this is true of monarchy, it would seem self evident that a democracy should seek to have the simplest possible form of government, for the greater the number

of persons and the more numerous the governmental agencies whose co-operation is necessary, the more difficult it is to secure action.

It may also be maintained that the more complex is the governmental machinery, the more difficult will it be for the people to enforce responsibility for the acts of government. In our early history Jefferson thought that frequent elections were sufficient to secure responsibility on the part of the representative to his constituents; it still remains true, of course, that the majority at an election can defeat a candidate whose action as their representative had displeased them, but it is very difficult to know, under our complex arrangements, how far a particular person is responsible for acts of government. It is easier in the case of an executive or administrative official than in that of a legislator, yet even in the former it is often difficult to fix the responsibility, especially if it be in regard to carrying out a program in which the legislature participates.

If democracy means the rule of the majority and if it be admitted that the present problem is to find a form of government which shall be efficient for the increased burden constantly placed upon it and easily and quickly responsive to the

popular will and truly responsible to the people for its acts, then a simplification either of life or of government is necessary. It is beyond the reach of possibility that life will grow more simple; on the contrary we may anticipate a constantly increasing complexity which will steadily enlarge the field of government action. It would appear, then, the part of wisdom to see if in any particular we may be able to simplify our governmental arrangements.

If we examine some of the more recent attempts to secure the supremacy of the will of the people in affairs of government, it will be evident that the initiative and the referendum have the tendency to complicate the machinery of government still further, while the commission form of government and the short ballot have the opposite effect. The former are losing ground because of the additional burden they have placed upon the already overloaded shoulders of the voters and the enthusiasm for the latter rests upon the desire for a simple method of giving expression to the popular will, to the promise of efficiency contained in it and to the prospect of responsibility which it offers.

A direct democracy in the government of the

United States or of the states cannot be regarded as possible of attainment; the people can never meet together to discuss or formulate measures, or to choose officials, and the initiative and the referendum should, at best, be held as reserve measures to meet emergency occasions. If this be true, the problem of finding an efficient and at the same time a popular government resolves itself into the problem of so arranging the structure of government that the chosen representative shall be able to carry out the wishes of the people and be held responsible for any failure to do so. Once again we are forced to the consideration of what changes will result in that simplicity of government which is necessary to secure these ends.

In undertaking such a task one has not a free field in which to operate for every proposal must be conditioned by the actual facts of our political experience. To attempt to formulate a plan for the accomplishment of these objects without giving heed to the tastes and inclinations of the American people would be futile. Yet much can be accomplished with but little alteration of the plan and scheme of the present arrangements. Of the proposed changes looking to a greater

simplicity in our governmental structure, all that have received serious consideration affect the state and municipal governments alone. The view is prevalent that any experiments should be made upon the smaller governing bodies since any injury resulting would be less far-reaching in its effects and more easily corrected. Perhaps for this reason in part the remodelling has begun with municipal governments. The commission form of government for cities represents that simplicity and responsibility and its success has led to the proposal in several states to extend the principle to the state government.

In the commission form, power is concentrated in the hands of a few individuals whose acts are open to the public view; responsibility for their acts may be enforced with comparative ease through the recall. This concentration of legislative and executive powers in the same hands is in violent conflict with the principle of the separation of the powers of government hitherto regarded as fundamental, but we no longer fear to entrust power to the government so long as it can be held responsible for its proper use.

Our state governments are confessedly inefficient and unresponsive to the popular will. This

is due to the decentralization of governmental power as well as to the separation of the branches of government and the system of checks and balances. The governor has become in large measure a legal figurehead. Though it is supposedly his duty to see that the laws are enforced, the power to enforce them has been put in the hands of the state officials and local authorities, elected by the people and in no sense subject to the control of the governor. Such a decentralization and dissipation of governmental power makes responsibility for the enforcement of the law a practical impossibility. Even political parties are unable to secure unity of action amidst such diverse elements. In the past few years the political influence and importance of the governorship has been enlarged through the fact that governors have more frequently been also leaders of the party and as such have been able to put through a legislative program. The same leadership is more apparent in the presidency than in the governorship.

To concentrate the executive power of the states in the hands of the governor and a cabinet or council appointed by him and acting as the heads of departments would be to establish a

condition which has proved acceptable in the national government. Such an arrangement would contribute greatly to the efficiency of our state governments and the power would not be dangerous since responsibility for its exercise could be enforced. Under the present decentralization authority is weakened by division lest it may do harm. Under a cabinet system it would be strengthened by being united in order that it might do good.

If we advance a step further in the simplifying process and abolish one house of the state legislature, responsibility for legislation will be made easier and inasmuch as no real difference underlies the basis of representation in the two houses, there will be no loss of representation to any element of the state.

As a further step toward securing responsibility in the government thus modified, some co-ordination of the executive and legislative branches should be devised. If the executive through the heads of the departments had the right to frame, introduce and advocate bills, and if the executive and the legislature were chosen at the same time, it would be possible for the voter to enforce responsibility upon one or both

of them. Such an arrangement would not leave the legislative branch helpless in the hands of the executive, but it would concentrate and centralize responsibility so that it could be definitely and accurately meted out to the individuals and the party meriting reward or rebuke. Under such a plan responsibility would shift from individual to party; at present almost the only attempt to enforce responsibility is upon the individual with relatively little thought for the party.

To make such a change more productive of a sense of responsibility to the people the present statutory and constitutional provisions requiring that a representative in the legislative body must reside in the district which he represents should be changed. This requirement, which is well-nigh universal in the states, and which custom has prescribed for the national legislature, forces the representative into the position of a representative of the district and not of the state or the nation. Also his first care is for the district and his best efforts are directed toward securing its good will through appropriations and appointments; he finds himself compelled to view legislation from the standpoint of its effect upon

his constituents and his own chances for reelection. Were law and custom changed so that a man might represent any district no matter where he lived, the "pork barrel" as an institution of our political life would disappear; the representative would have more than a local outlook and yet his sense of responsibility to the people would be enhanced.

The abolition of the residence requirement would produce two effects of the utmost consequence to our political life; it would make of politics a legitimate career, and it would make the leaders of the government the leaders of the party.

Under present conditions it is largely a matter of chance whether or not a man can enter political life, for his political opinions may not be those of the majority of the district in which he lives; in order to enter political life such a man must move his residence or change his views. Assuming that he holds views in harmony with the majority in his district and that he secures an election, the chances that he will be able to continue in politics as a career are very slight. No matter how able he may be nor how excellent a public servant, his career is liable to be termin-

ated by a change of opinion in the district or by a change even within his own party within the district. In either event he is left stranded and the state or nation may lose the services of a valuable public servant. If election from any district were possible, men could and would look upon political life as a career upon which they could enter with the reasonable expectation of being able to continue in it if their talents and ability justified. Such men would find their satisfaction in the success which they attained; the honor of the position would be sufficient reward. Under our present system, where tenure of office is uncertain and where brevity of tenure has been regarded as a tenet of democratic faith, politics as a career has been as a rule impossible. Politics as a business has been followed by those who found it financially profitable and the political boss oftener than not holding no office, has sought to control government for selfish purposes. If politics can be made a career, then the leaders in government will be more permanent; they will likewise become the leaders of the party and politics as a business for financial profit will disappear with the political boss. When the leaders of the government are also the leaders of the

party, then party responsibility can be enforced in the largest degree; moreover when this co-ordination between parties and the government has taken place, it will be to the interest of the party leaders to see to it that the men who give promise of a future brilliant career shall be returned and once established as a valuable member, successive elections are practically assured.

The presence of parties in modern political life is universal but the evils to which parties have given rise have led some to demand their abolition, and in California the legislature has passed an act providing for non-party ballot. The argument upon which this action was made to rest is that parties are determined in the United States by national issues; that the governing of a state is not to be determined in accordance with national issues, but, like the government of cities, it is a business proposition which should not be decided by a party vote. There is some measure of truth in the statement that party lines are drawn in accordance with national issues but there is no foundation for the statement that the governing of a state is purely a matter of business administration and not a matter of policies. So long as the states retain control of property and

family rights it can scarcely be maintained that questions of policy are not involved. It is true that national issues sometimes carry a party into power in a state where it otherwise would not have been successful. The remedy lies in not holding state elections simultaneously with national elections; state policies can then be judged more nearly on their own merits; if it still be contended that national issues will sometimes turn the scale, then it may be answered that better so than to have no unifying force in government and no leaders for the formation of policies. True responsibility can be achieved only through party responsibility; individuals who have displeased the constituency may be defeated but to accomplish a constructive program or to carry out a policy there must be a party, with representatives pledged to that program or policy, which may be held responsible as a party for failure to carry it out.

One more change remains to be considered without which all the others will be much impaired in value and which, without them, would nevertheless do much to produce responsibility in government. Almost the greatest difficulty which confronts the voter is the task of knowing some-

thing about the persons among whom he is called upon to make choice. The number of elective offices and the frequency of elections have made it practically impossible for the voter to cast his ballot intelligently. The principle of election so long regarded as fundamental in the democracy, has resulted in placing the nomination, and consequently the election, of candidates in the hands of the bosses. The voter must vote blindly and generally will vote for the candidates of the party with which he sympathizes. Direct primaries alone will not remedy the evil since the number will still be far beyond what the average voter will have the time and opportunity to investigate. The remedy for this condition is the short ballot or a discarding of the theory that election is sufficient to secure responsibility. Too much election has proved ruinous to popular control. The principle of the short ballot if adopted would result in the election at any one time of only a few individuals and the placing in the hands of the higher executive officials the appointment of all those subordinate administrative officers who could not properly be put upon the permanent civil service roll. Judges likewise should be appointed instead of elected.

Whatever changes may be made in our system of governments, of one thing we may be sure, no change which does not contribute to an easier expression of the popular will or which does not increase the facility with which government performs its tasks will endure. Democracy in the United States demands an easy and efficient instrument for the expression of its will.

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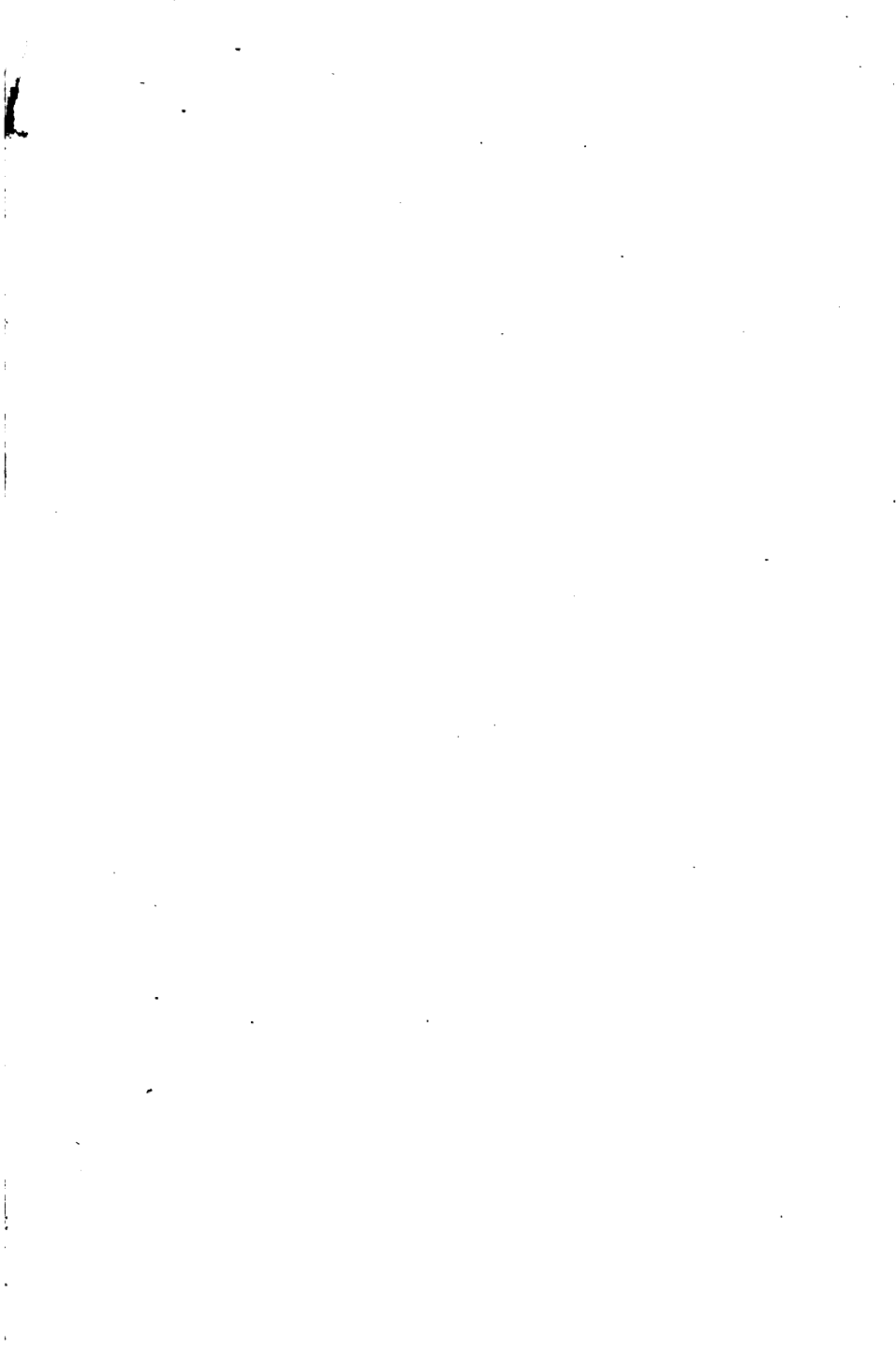
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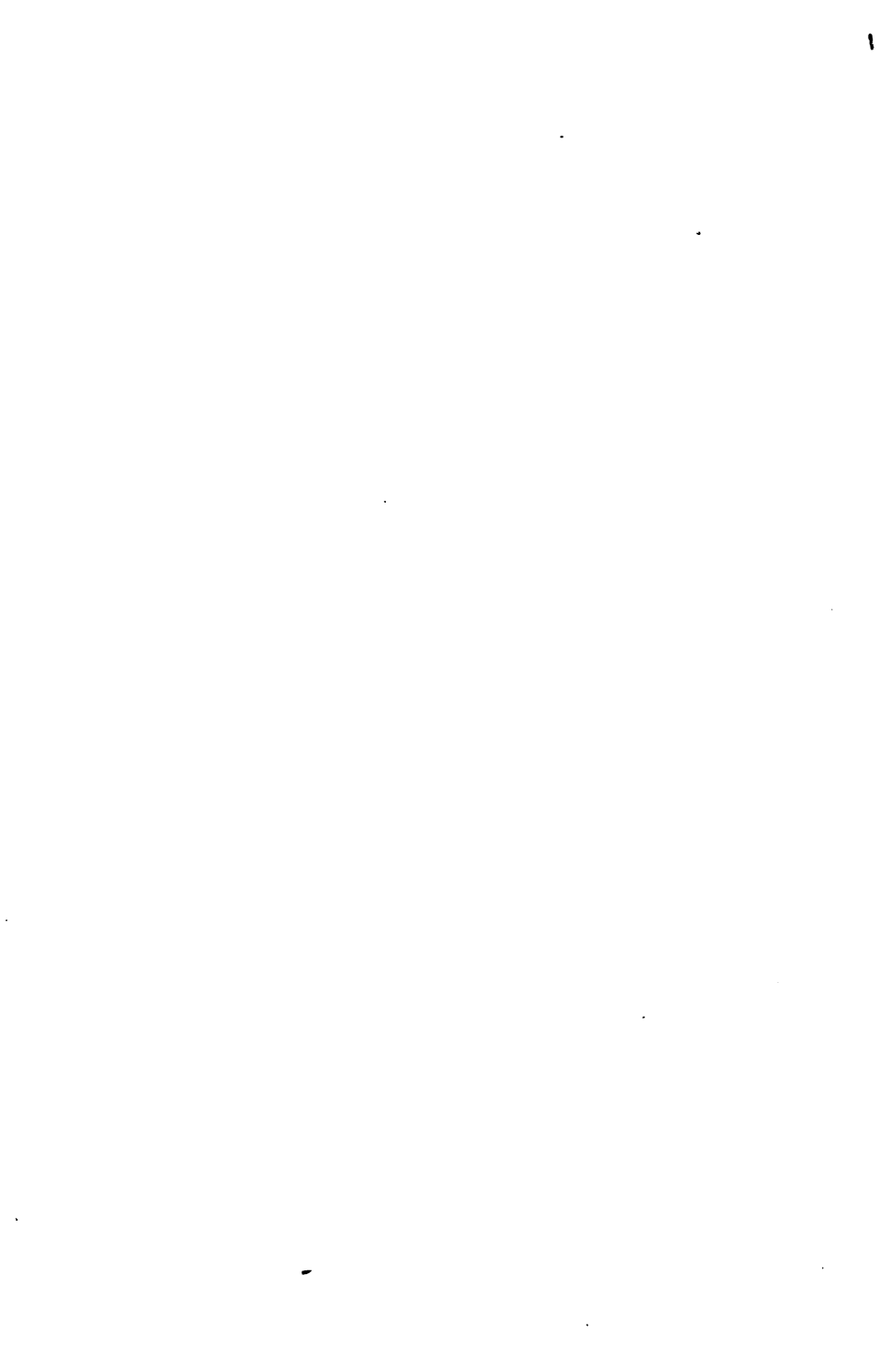
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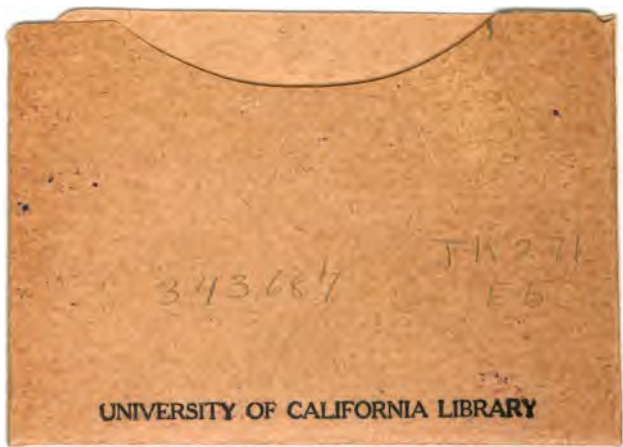
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